



ALCOHOLIC BEVERAGE TAX LAW

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CALIFORNIA CONSTITUTION, ARTICLE XX STATE CONTROL OF LIQUOR

Sec. 22. The State of California, subject to the internal revenue laws of the United States, shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State, and subject to the laws of the United States regulating commerce between foreign nations and among the states shall have the exclusive right and power to regulate the importation into and exportation from the State, of alcoholic beverages. In the exercise of these rights and powers, the Legislature shall not constitute the State or any agency thereof a manufacturer or seller of alcoholic beverages.

* * *

The Department of Alcoholic Beverage Control shall have the exclusive power, except as herein provided and in accordance with laws enacted by the Legislature, to license the manufacture, importation and sale of alcoholic beverages in this State, and to collect license fees or occupation taxes on account thereof.

* * *

The State Board of Equalization shall assess and collect such excise taxes as are or may be imposed by the Legislature on account of the manufacture, importation and sale of alcoholic beverages in this State.

* * *

The Legislature shall provide for apportioning the amounts collected for license fees or occupation taxes under the provisions hereof between the State and the cities, counties and cities and counties of the State, in such manner as the Legislature may deem proper.

* * *

[Amendment adopted November 6, 1956.]

History.—Original section adopted November 8, 1932, contained no provision relating to taxation. The amendment adopted November 6, 1934, granted to the State Board of Equalization, among other powers, “the exclusive power . . . to collect license fees or occupation taxes on account” of the manufacture, importation and sale of intoxicating liquors. By the amendment adopted November 2, 1954, the power to collect license fees or occupation taxes was transferred to the Department of Alcoholic Beverage Control. The 1954 amendment added the provision that the State Board of Equalization shall assess and collect the excise taxes. The amendment adopted November 6, 1956, did not relate to taxation.

Property taxation not affected.—This section does not deprive the political subdivisions of the state of the power to levy a property tax upon intoxicating liquors. *Three G Distillery Corporation v. Los Angeles County*, (1941) 46 Cal. App.2d 498.

Local revenue affected by state centralization of liquor control.—The provision in this section for apportioning license fees or occupation taxes is recognition of the fact that centralization of liquor control in the state government would deprive local subdivisions of the state of a potential source of revenue. *Roehm v. County of Orange*, (1948) 32 Cal.2d 280.

Municipal excise tax validly applied to purchases of intoxicating liquors.—Section 22 of Article XX of the State Constitution, reserving to the state the “exclusive . . . power to . . . regulate” the “sale” and “purchase” of intoxicating liquor is not violated by application to the sale of intoxicating liquors of a municipal ordinance imposing an excise tax on the purchase at retail of tangible personal property and requiring collection of the tax from the purchaser by the retailer. *Ainsworth v. Bryant*, (1949) 34 Cal.2d 465.

**UNITED STATES CONSTITUTION, AMENDMENT NO. XXI
REPEAL OF EIGHTEENTH AMENDMENT**

§ 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

§ 2. The transportation or importation into any state, territory or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

§ 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by convention in the several states, as provided in the Constitution within seven years from the date of the submission hereof to the states by the Congress.

History.—This amendment to the federal Constitution became effective December 5, 1933.

Imposition of importer's license fee constitutional.—The provision of the Alcoholic Beverage Control Act imposing a license fee of five hundred dollars (\$500) for the privilege of importing beer within the state does not violate the federal Constitution. The provision is valid under Section 2 of the Twenty-first Amendment. *State Board of Equalization v. Young's Market Company*, (1936) 299 U.S. 59.

Shipments through state.—The Twenty-first Amendment has no application to the transportation of liquor through a state; hence liquor purchased for shipment to Hawaii, but temporarily stored in San Francisco warehouses because of shortage of shipping space, is not subject to local property taxation. *Von Hamm-Young Co. v. San Francisco*, (1947) 29 Cal.2d 798.

Foreign imports.—Neither the state nor any of its subdivisions may impose a property tax on liquor imported from a foreign country while it remains in its original package, unconsigned and unsold on the assessment date, and still in the hands of the original importer. *Parrott and Co. v. San Francisco*, (1955) 131 Cal.App.2d 332.

ANALYSIS OF ALCOHOLIC BEVERAGE TAX LAW

Nature and Rate of Tax. The administration of this tax is closely related to the licensing of persons dealing in alcoholic beverages in this state. The tax is imposed on the “sale” of the alcoholic beverages by manufacturers, distillers, winegrowers, wholesalers, rectifiers, importers, and others selling such beverages with respect to which no tax has been paid. Tax applies to sales to unlicensed persons within areas over which the United States Government exercises jurisdiction. The rates are:

Beer: \$1.24 per barrel of 31 gallons and at a proportionate rate for any other quantity (Sec. 32151) and an additional 16 cent per gallon surtax. (Sec. 32220.)

Wine: Still wines containing not more than 14 percent of absolute alcohol by volume, 1 cent per wine gallon and 19 cent per wine gallon surtax; wines containing more than 14 percent, 2 cents per wine gallon and 18 cent per wine gallon surtax; champagne and sparkling wines, 30 cents per wine gallon; sparkling hard cider, 2 cents per wine gallon and 18 cent per wine gallon surtax; and at a proportionate rate for any quantity. (Sec. 32151 and 32220.)

Distilled spirits: Distilled spirits of proof strength (100 proof) or less, \$2 per wine gallon, and at a proportionate rate for any quantity, and on all nonliquid distilled spirits containing 50 percent or less alcohol by weight 2 cents per ounce avoirdupois, and at a proportionate rate for any quantity and a \$1.30 per gallon surtax. Distilled spirits in excess of proof strength, and all nonliquid distilled spirits containing more than 50 percent alcohol by weight, are taxed at double the above rate in addition to a \$2.60 per gallon surtax. (Sec. 32201, Sec. 32220.)

“Sale.” “Sale” includes the transfer with or without consideration of title to alcoholic beverages; the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages; the transfer of such beverages by a person holding one type of license to himself for the purpose of sale under a retailer’s license; and the transfer of such beverages by a customs broker to any person within this state except a licensed importer. “Sale” does not include the return of alcoholic beverages by a licensee to the licensee from which the beverages were purchased. (Sec. 32003, Business and Professions Code Section 23025.)

General Exemptions: Tax does not apply to

1. Alcoholic beverages in continuous transit through the state. (Sec. 32051.)
2. Certain sales of alcohol, distilled spirits, or wine for use in the trades, professions, or industries, and not for beverage purposes. (Sec. 32052.)

3. Sales of alcoholic beverages to certain common carriers of persons when the beverages will be used on their facilities outside this state. (Sec. 32054.)

Presumptions and Exemptions:

1. **Beer:** It is presumed that all beer removed from internal revenue bonded premises of a beer manufacturer has been sold in this state unless it is established:

a. The beer was sold and delivered in internal revenue bond to another beer manufacturer in this state. (Sec. 32171.)

b. Was exported. (Sec. 32171.)

c. Was otherwise exempted from tax, such as consumed by employees on the premises (Sec. 32172) or sold to certain listed instrumentalities of the armed forces of the United States. (Sec. 32177.)

2. **Wine:** It is presumed that all wine removed from a winery or wine cellar bonded under internal revenue laws has been sold in this state unless it is established:

a. That the wine was exported. (Sec. 32173.)

b. That the wine was sold or delivered in internal revenue bond to another winegrower. (Section 32174.)

c. That the wine was otherwise exempt.

3. Imported beer and wine are presumed sold at the time received by the licensee in this state, unless it is established that the beer or wine was exported. (Sec. 32175.)

4. Credit may be allowed certain licensees for taxpaid wine or beer that was subsequently exported or destroyed. (Sec. 32176.)

5. **Distilled Spirits:** It is presumed that all distilled spirits acquired by any taxpayer in this state have been sold by him unless it is established:

a. The distilled spirits are still in his possession.

b. They were sold or delivered to another licensed distilled spirits manufacturer, rectifier, or wholesaler.

c. They have been exported.

d. They were lost through unintentional destruction.

e. They are otherwise exempt from tax. Examples of sales not subject to tax include sales of bulk brandy to a licensee of another state, sales of distilled spirits to certain common carriers for sale or use aboard their facilities. (Secs. 32211 to 32213.)

Credit for tax paid may be claimed for distilled spirits sold to certain persons holding a permit under federal law and who use the distilled spirits in food products. (Sec. 32214.)

Registration and Bond. The issuance by the Department of Alcoholic Beverage Control of any manufacturer's, winegrower's, wine blender's, distilled spirits manufacturer's agents, rectifier's, wholesaler's, importer's or customs broker's license constitutes registration under this law. Each registrant shall post such security as is required by law. (Secs. 32101-32107.)

Common carriers, except railroads and steamship companies must register with the Board before transporting alcoholic beverages into this state. (Sec. 32109.)

Returns and Payments. Common carriers selling distilled spirits on their facilities in this state, shall file a return with the Board for each calendar month, on or before the first day of the second calendar month following the month for which the return is made. (Sec. 32202.) All other taxpayers must file a return on or before the 15th day of the month following the month for which the return is made. Each return must be accompanied by a remittance of the tax due. (Sec. 32251.)

Whenever the returns filed by a taxpayer report tax liabilities that average less than \$100 per month, the Board may require returns and payment for quarterly or annual periods. (Sec. 32251.5.)

Unless an extension of time is granted, a 10 percent penalty will accrue if the tax is not paid when due and a penalty of \$50 will be imposed if a return is not filed within the time prescribed. The penalties imposed are limited to either 10 percent of the tax or \$50, whichever is greater. (Sec. 32252.) Interest accrues from the due date of the tax until paid. (Secs. 32251-32255.)

Records. The taxpayers must keep adequate and complete records on forms prescribed by the Board.

Disposition of Proceeds. Taxes, interest, and penalties are deposited in the State Treasury to the credit of the Alcohol Beverage Control Fund. (Sec. 32501.)

Penalties. Severe civil and criminal penalties are imposed for violation of the law. (Secs. 32551-32555.)

Refunds on Losses. On and after April 1, 1980, a refund without interest is allowed for tax paid on alcoholic beverages which have been lost, rendered unmarketable, or condemned by authorized officials due to certain disasters or damages. The minimum claim allowable is \$250.

ALCOHOLIC BEVERAGE TAX LAW

(Part 14, Division 2, Revenue and Taxation Code*)

Enacted Statutes 1955, Chapter 1842; amended Statutes 1955, Chapter 959; Statutes 1957, Chapters 155, 322, 357, 809, 980; Statutes 1959, Chapters 547, 903, 1125; Statutes 1961, Chapters 232, 233; Statutes 1963, Chapters 558, 1022, 1325, 1397, 1527; Statutes 1965, Chapters 208, 332, 499, 671, 679, 690, 1920, 2015; Statutes 1967, Chapters 881, 963; Statutes 1968, Chapters 539, 632, 1299; Statutes 1969, Chapter 180, 368; Statutes 1970, Chapter 547; Statutes 1971, Chapter 1593, 1634; Statutes 1972, Chapters 103, 969; Statutes 1973, Chapter 563; Statutes 1974, Chapters 610, 1516; Statutes 1975, Chapters 661, 1186; Statutes 1976, Chapter 128; Statutes 1977, Chapters 329, 481, 921; Statutes 1978, Chapter 827; Statutes 1979, Chapters 322, 633; Statutes 1980, Chapters 600, 1280. Statutes 1981, Chapter 947. Statutes 1982, Chapters 5 (First Extra Session), 454, 497, 517, and 1589. Statutes 1983, Chapter 1092.

- Chapter 1. General Provisions and Definitions. §§ 32001–32010.
- 2. General Exemptions. §§ 32051–32054.
- 3. Registration and Bonds. §§ 32101–32111.
- 4. Tax on Beer and Wine. §§ 32151–32179.
- 5. Tax on Distilled Spirits. §§ 32201–32214.
- 5.5. Surtax on Beer, Wine, and Distilled Spirits. §§ 32220–32230.
- 6. Determinations. §§ 32251–32313.
- 7. Collection of Tax. §§ 32351–32389.5.
- 8. Overpayments and Refunds. §§ 32401–32440.
- 9. Administration. §§ 32451–32476.
- 10. Disposition of Proceeds. §§ 32501–32502.
- 11. Violations. §§ 32551–32557.

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- § 32001. Title.
- § 32002. Construction.
- § 32003. “Sale.”
- § 32004. “Tax.”
- § 32005. “Taxpayer.”
- § 32006. Continuation of existing law.
- § 32007. Actions commenced or rights accrued not affected by this part.
- § 32010. Tax in lieu of local taxes.

32001. Title. This part is known and may be cited as the “Alcoholic Beverage Tax Law.”

32002. Construction. Unless the context otherwise requires, the definitions set forth in this chapter and those in Chapter 1 (commencing with Section 23000) of Division 9 of the Business and Professions Code govern the construction of this part.

History.—Stats. 1982, Ch. 454, in effect January 1, 1983, added “(commencing with Section 23000)” after “Chapter 1.”

Note.—See Business and Professions Code provisions in this volume.

32003. “Sale.” “Sale,” as used in Sections 32151 and 32201 of this code, includes, in addition to the definition in Section 23025 of the Business and Professions Code, the transaction whereby alcoholic beverages are transferred, with or without consideration, by a licensee holding one type of license to himself for purposes of sale under a retailer’s license held by him or to any person for any purpose; and the transaction whereby alcoholic beverages are transferred, with or without consideration, by a customs broker to any person within this State except a licensed importer.

* The provisions of this part, except as otherwise noted, became effective September 7, 1955.

32004. **“Tax.”** “Tax,” as used in this part, except in Chapters 4 (commencing with Section 32151) and 5 (commencing with Section 32201), means the excise tax imposed by this part on beer or wine or on distilled spirits.

History.—Stats. 1982, Ch. 454, in effect January 1, 1983, substituted “Chapters 4 (commencing with Section 32151) and 5 (commencing with Section 32201)” for “Chapters 4 and 5” after “except in.”

32005. **“Taxpayer.”** “Taxpayer,” means a person liable for the payment of a tax pursuant to this part.

32006. **Continuation of existing law.** The provisions of this part insofar as they are substantially the same as existing provisions of law relating to the same subject matter shall be construed as restatements and continuations and not as new enactments.

32007. **Actions commenced or rights accrued not affected by this part.** Any action or proceeding commenced before this part takes effect, or any right accrued, is not affected by this part, but all procedure taken shall conform to the provisions of this part as far as possible.

32010. **Tax in lieu of local taxes.** The taxes imposed by this part are in lieu of all county, municipal, or district taxes on the sale of beer, wine, or distilled spirits.

This section does not prohibit the application of Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200) or Part 1.6 (commencing with Section 7251) to the sale, storage, use or other consumption of beer, wine, or distilled spirits.

History.—Added by Stats. 1959, p. 3208, in effect June 24, 1959. Stats. 1969, p. 461, in effect June 12, 1969, added the reference to Part 1.6 and substituted “this division” for “Division 2 of this code”, in the second paragraph. Stats. 1982, Ch. 454, in effect January 1, 1983, deleted “of this division” after “7251)” in the second paragraph.

Prohibited city tax.—Special city excise tax on the purchase of alcoholic beverages for consumption on the premises where sold violated this section. *Century Plaza Hotel Co. v. City of Los Angeles*, (1970) 7 Cal.App.3d 616.

CHAPTER 2. GENERAL EXEMPTIONS

§ 32051.	Continuous transit through State.
§ 32052.	Industrial spirits and wine.
§ 32053.	Package sizes for exempt spirits.
§ 32054.	Sales to common carriers.

32051. **Continuous transit through State.** Alcoholic beverages in continuous transit through this State are exempt from the provisions of this part only while in continuous transit through this State in the possession or custody of common carriers. The board may require affidavits of any person on forms prescribed by the board and may require any such shipments to be checked in and checked out at the boundaries of the State. Any person refusing to make the affidavits required or refusing to check in or check out the alcoholic beverages is guilty of a misdemeanor.

32052. **Industrial spirits and wine.** No tax shall be imposed upon the sale of alcohol, distilled spirits, or wine by distilled spirits manufacturers, brandy manufacturers, rectifiers, industrial alcohol dealers, or wine growers for use in the trades, professions, or industries, but not for beverage use.

Complete information concerning sales of distilled spirits or wine for use in trades, professions, or industries by persons holding industrial alcohol dealers' licenses, distilled spirits manufacturers' licenses, brandy manufacturers' licenses, rectifiers' licenses, and wine growers' licenses shall be reported to the board each month by such licenses on forms prescribed by the board.

32053. Package sizes for exempt spirits. Except as provided in Section 23113 of the Business and Professions Code, alcohol or other distilled spirits sold for the uses mentioned in Sections 23111 and 23112 of that code may be sold free of the tax imposed by this part only when sold in packages of a capacity of larger than one gallon.

Distilled spirits sold in quart bottles for medicinal purposes not tax exempt.—The sale of distilled spirits in quart-size bottles is not exempt from taxation even though for medicinal use. *National Distillers Products Corporation v. State Board of Equalization*, (1947) 83 Cal.App.2d 35.

32054. Sales to common carriers. No tax shall be imposed upon the sale of alcoholic beverages by a licensee in this State to a common carrier or to a person licensed to sell alcoholic beverages on boats, trains, or airplanes operated by a common carrier when the alcoholic beverages are to be used without this State; nor in such case need the common carrier procure a license for purposes of purchasing alcoholic beverages from a licensed manufacturer, wine grower, rectifier, importer, or wholesaler.

CHAPTER 3. REGISTRATION AND BONDS

- § 32101. Registration by obtaining license.
- § 32102. Surety bond.
- § 32103. Amount.
- § 32104. Withdrawal.
- § 32105. Deposit of money or securities in lieu of bond. [Repealed.]
- § 32106. Treasurer's payment to board.
- § 32107. Notice to Department of Alcoholic Beverage Control concerning bond cancellation.
- § 32109. Trucking company carriers.
- § 32110. Out-of-state wine or beer manufacturers.
- § 32111. Distilled spirits manufacturers.

32101. Registration by obtaining license. The issuance of any manufacturer's, winegrower's, wine blender's, distilled spirits manufacturer's agent's, rectifier's, wholesaler's, importer's, customs broker's license, or wine direct shipper permit under Division 9 (commencing with Section 23000) of the Business and Professions Code shall constitute the registration of the person to whom the license or permit is issued as a taxpayer under this part. Upon the issuance of any of these licenses the Department of Alcoholic Beverage Control shall furnish a copy thereof to the board.

History.—Stats. 1968, p. 1200, in effect November 13, 1968, added "wine blender's" and deleted "wine rectifier's" from the types of licenses which constitute registration. Stats. 1982, Ch. 454, in effect January 1, 1983, added "(commencing with Section 23000)" after "Division 9" in the first sentence. Stats. 2005, Ch. 157 (SB 118), in effect January 1, 2006, deleted "or" after "wholesaler's, importer's" and added ", or wine direct shipper permit" after "customs broker's license" in the first sentence, and added "or permit" after "to whom the license" and substituted "of these licenses" for "such license" after "Upon the issuance of any" in the second sentence.

32102. Surety bond. The board, whenever it deems it necessary to ensure compliance with this part, may require any person subject thereto, to place with it that security as the board may determine, in the form and amount as the board prescribes. Any security in the form of cash, insured deposits in banks and savings and loan institutions, or a bond or bonds duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all the requirements of this part, and expressly providing for the payment of all license taxes, penalties, and other obligations of the person arising out of this part, shall be held in trust to be used solely in the manner provided by this section.

History.—Stats. 1982, Ch. 517, in effect January 1, 1983 substituted “an admitted surety insurer” for “him . . . surety” after “executed by.” Stats. 1993, Ch. 1113, in effect January 1, 1994, substituted “the” for “such” after “board, in”, added “and amount” after “form”, added “any security . . . , or” after “prescribes,”, added “duly” after “bonds”, deleted “people of the” after “to the”, substituted “state” for “State of California”, added “faithful . . . providing for” after “upon”, added “license” after “of all”, substituted “person” for “taxpayer” after “obligations of the”, substituted “out of” for “under” after “arising”, and added “, shall be . . . section” after “part”. Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted “The board, whenever . . . board prescribes. Any” for “Every taxpayer shall file with the board, in the form and amount as the board prescribes, a” at the beginning of the section.

32103. Amount. Subject to limitations provided in this article, the board shall fix the total amount of the security required of any taxpayer and may increase or reduce the amount at any time. In fixing the total amount, the board may set an amount which is not less than five hundred dollars (\$500) and not more than twice the taxpayer’s estimated monthly tax for taxpayers reporting monthly, or not more than twice the taxpayer’s estimated tax for the tax reporting period for taxpayers reporting for periods longer than one month ascertained in such manner as the board may deem proper.

History.—Stats. 1972, Ch. 969, in effect March 7, 1973, repealed the original section which required the board to set the total bond amount at twice the taxpayer’s estimated monthly liability and not less than \$500, and enacted the present section. Stats. 1975, Ch. 1186, in effect January 1, 1976, added the phrase regarding taxpayers reporting for periods longer than one month. Stats. 1993, Ch. 1113, in effect January 1, 1994, substituted “security” for “bond or bonds” in the first sentence.

32104. Withdrawal. Every bond shall contain a provision substantially that when the surety exercises his right to withdraw as surety the withdrawal shall be effective on the first day of the calendar month after receipt of the notice by the board if the notice is received on or before the 15th day of the month, otherwise the withdrawal shall be effective on the first day of the second calendar month after receipt of the notice by the board.

32105. Deposit of money or securities in lieu of bond. [Repealed by Stats. 1982, Ch. 517, in effect January 1, 1983.]

32106. Treasurer’s payment to board. Upon receipt of a certificate of the board setting forth the amount of a taxpayer’s delinquencies, the State Treasurer shall pay to the board the amount so certified from the money deposited with him by the taxpayer or from the amounts received from the sale of bonds or other obligations deposited with the Treasurer by the taxpayer. Securities deposited with the State Treasurer which have a prevailing market price may be sold by him for the purposes of this section at private sale at a price not lower than the prevailing market price thereof.

32107. Notice to Department of Alcoholic Beverage Control concerning bond cancellation. Whenever a taxpayer's bond is canceled, or becomes void or unenforceable for any reason, or whenever a taxpayer fails to pay any taxes or penalties due under this part, the board shall give written notice thereof to the Department of Alcoholic Beverage Control.

32109. Trucking company carriers. Any common carrier, except railroad and steamship companies, before engaging in the business of transporting shipments of alcoholic beverages into this State, shall register with the board and make application to the board for an interstate alcoholic beverage transporter's permit, which, upon issuance, shall be valid until revoked by the board.

32110. Out-of-state wine or beer manufacturers. Before commencing to transport wine or beer into this state pursuant to the provisions of Section 23661.5 of the Business and Professions Code, the wine or beer manufacturer or producer shall register with the board and make application to the board for a manufacturer's interstate alcoholic beverage transporter's permit, which, upon issuance, shall be valid until revoked by the board.

History.—Added by Stats. 1959, p. 2940, in effect September 18, 1959. Stats. 1970, p. 1059, in effect November 23, 1970, added the words "or beer" following the word "wine".

32111. Distilled spirits manufacturers. Before commencing to transport distilled spirits into this state pursuant to the provisions of Section 23661 of the Business and Professions Code, the distilled spirits manufacturer shall register with the board and make application to the board for a manufacturer's interstate alcoholic beverage transporter's permit, which, upon issuance, shall be valid until revoked by the board.

History.—Added by Stats. 1973, Ch. 563, effective January 1, 1974.

CHAPTER 4. TAX ON BEER AND WINE

- Article 1. Imposition of Tax. §§ 32151–32152.
- 2. Presumptions and Exemptions. §§ 32171–32179.

Article 1. Imposition of Tax.

- § 32151. Rate.
- § 32152. Coordination with federal system.

32151. Rate. Except as otherwise provided in this part, an excise tax is imposed upon all beer and wine sold in this State or pursuant to Section 23384 of the Business and Professions Code by a manufacturer, wine grower, or importer, or sellers of beer or wine selling beer or wine with respect to which no tax has been paid within areas over which the United States Government exercises jurisdiction, at the following rates:

(a) On all beer, sixty-two cents (\$0.62) for every barrel containing 31 gallons and at a proportionate rate for any other quantity until July 1, 1959,

and on and after July 1, 1959, one dollar and twenty-four cents (\$1.24) for every barrel containing 31 gallons and at a proportionate rate for any other quantity.

(b) On all still wines containing not more than 14 percent of absolute alcohol by volume, one cent (\$0.01) per wine gallon and at a proportionate rate for any other quantity.

(c) On all still wines containing more than 14 percent of absolute alcohol by volume, two cents (\$0.02) per wine gallon and at a proportionate rate for any other quantity.

(d) On champagne, sparkling wine, excepting sparkling hard cider, whether naturally or artificially carbonated, thirty cents (\$0.30) per wine gallon and at a proportionate rate for any other quantity.

(e) On sparkling hard cider, two cents (\$0.02) per wine gallon and at a proportionate rate for any other quantity.

(f) Except with respect to beer in the internal revenue bonded premises of a beer manufacturer, for the privilege of possessing or selling beer on which a tax not greater than at the rate of sixty-two cents (\$0.62) per barrel has been paid under this part, a floor stock tax of sixty-two cents (\$0.62) per barrel, and at a proportionate rate for any other quantity, is hereby imposed on all beer possessed at 12.01 a.m. on July 1, 1959, by every person licensed under Division 9 of the Business and Professions Code. On or before July 31, 1959, each person subject to the tax imposed by this subdivision shall prepare and file with the board, on a form prescribed by the board, a return showing the amount of beer possessed by him at 12.01 a.m. on July 1, 1959, that is subject to the tax imposed by this subdivision, and such other information as the board deems necessary for the proper administration of this part. The taxpayer shall deliver the return, together with a remittance of the amount of tax due, to the office of the board on or before July 31, 1959.

All the provisions of this part relating to excise taxes are applicable also to the tax imposed by this subdivision, to the extent that they are not inconsistent with this subdivision.

History.—Stats. 1959, p. 3207, in effect June 24, 1959, increased the rate on beer as provided in subdivision (a) from \$0.62 to \$1.24 per barrel and added subdivision (f).

Note.—Stats. 1955, p. 750, operative July 1, 1955, which was prior to the effective date of this section, changed the rate on champagne, etc., to that provided in subdivision (d).

Taxing provisions applicable in Yosemite National Park.—The taxes levied on the sale of alcoholic beverages apply with respect to sales of liquor in Yosemite National Park by virtue of Stats. 1919, Ch. 51, ceding to the United States exclusive jurisdiction over the park, subject to certain reservations, including the right of the State to levy taxes, and the Congressional Act of 1920, accepting exclusive jurisdiction subject to such reservations. *Collins v. Yosemite Park & Curry Company*, (1937) 304 U. S. 518.

32152. Coordination with federal system. The board shall adopt such rules and regulations as may be necessary to coordinate so far as permitted by the provisions of this part the system of beer and wine taxation imposed by this part with the system of beer and wine taxation imposed by the internal revenue laws of the United States.

Article 2. Presumptions and Exemptions

§ 32171.	Presumption that beer is sold.
§ 32172.	Consumption by brewers' employees.
§ 32173.	Presumption that wine is sold.
§ 32174.	Wine sold to another wine grower.
§ 32175.	Imported beer or wine presumed sold.
§ 32176.	Credit for taxes on exported or destroyed beer or wine.
§ 32177.	Military beer exemption. [Repealed.]
§ 32177.5.	Military exemption. [Repealed.]
§ 32177.5.	Military distilled spirits exemption.
§ 32178.	Wine rectifier's exports.
§ 32179.	Claim for exemption.

32171. Presumption that beer is sold. It shall be presumed, for the purposes of this part, that all beer removed from the internal revenue bonded premises of a beer manufacturer has been sold in this State by the manufacturer, unless one of the following is proved to the satisfaction of the board, in reports on forms prescribed by the board:

(a) That the beer has been sold and delivered in internal revenue bond to another beer manufacturer in this State.

(b) That the beer has been exported without this State or sold for export by the beer manufacturer making the report and actually exported from this State.

(c) That the beer is beer otherwise exempted from taxation under this part.

History.—Stats. 1957, p. 965, in effect September 11, 1957, deleted "(d) That the beer is still in the possession of the licensee."

Failure to comply with board rule held waiver of exemption.—Rule 54, Title 4, California Administrative Code (now Regulation 2563, Title 18 of said code), prescribing the procedure for any claim for exemption from excise tax on beer exported from the State, which was set forth by the State Board of Equalization pursuant to the authority delegated to the board by statute, in the absence of any showing to the contrary, will be construed to be a reasonable and valid exercise of the authority so delegated, and failure of a beer manufacturer to comply with the rule constitutes a waiver of the exemption. *San Francisco Brewing Corporation v. Johnson*, (1952) 110 Cal.App.2d 479.

32172. Consumption by brewers' employees. Beer consumed by employees of a manufacturer upon the premises of the manufacturer is exempted from the tax under such rules as the board may prescribe.

32173. Presumption that wine is sold. It shall be presumed, for the purposes of this part, that all wine removed from a winery or wine cellar bonded under the internal revenue laws of the United States on payment of the internal revenue tax by a wine grower has been sold in this State by the wine grower, unless it is proved to the satisfaction of the board, in reports on forms prescribed by the board, that the wine has been exported from this State or sold for export by the wine grower making the report and actually exported from this State or that the wine is otherwise exempt from taxation under this part.

History.—Stats. 1957, p. 965, in effect September 11, 1957, substituted "cellar" for "storerooms." Stats. 1957, p. 771, approved by the Governor prior to Stats. 1957, p. 965, would also have amended this section.

32174. Wine sold to another wine grower. No tax is imposed by this part upon any wine sold or delivered in internal revenue bond to another wine grower in this State.

32175. Imported beer or wine presumed sold. It shall be presumed, for the purposes of this part, that all beer and wine imported into this State by a beer manufacturer or wine grower or importer has been sold in this State at the time it is received by the licensee, unless it is proved to the satisfaction of the board, on forms prescribed by the board, that the beer or wine is still in the possession of the beer manufacturer or the wine grower in internal revenue bond within this State, or has been exported from this State by the licensee making the report or has been sold by him for export and actually exported from this State, or is otherwise exempt under this part.

History.—Stats. 1957, p. 965, in effect September 11, 1957, added “the beer manufacturer or” following “possession of.”

32176. Credit for taxes on exported or destroyed beer or wine. (a) If taxes have been paid on beer or wine subsequently exported from the state or sold for export and actually thereafter exported from this state, or on beer or wine subsequently destroyed under the supervision of a board representative, a taxpayer may claim and shall be allowed credit with respect to the taxes in any report filed or assessment made under this part.

(b) A beer manufacturer located in this state may claim and shall be allowed a credit for excise taxes paid on tax paid beer returned by a licensed wholesaler and subsequently destroyed by the beer manufacturer under the supervision of a board representative. The credit shall be allowed only if the beer manufacturer has credited the licensed wholesaler the amount of the tax. If the credit is allowed to the beer manufacturer, a credit shall not be allowed to the licensed wholesaler with respect to the destruction of the same product.

(c) A winegrower may claim credit with respect to excise taxes on wine purchased state tax paid from another winegrower and subsequently exported or sold for export and actually exported.

(d) A beer manufacturer or a beer and wine wholesaler may claim credit for excise taxes on beer purchased state tax paid and subsequently exported or sold for export and actually exported.

History.—Stats. 1957, p. 965, in effect September 11, 1957, added last paragraph. Stats. 1965, p. 4545, in effect September 17, 1965, added third paragraph. Stats. 1995, Ch. 555, in effect January 1, 1996, added subdivision letters (a), (c), and (d) and added subdivision (b).

32177. Military beer exemption. [Repealed by Stats. 1976, Ch. 128, operative January 1, 1980.]

32177.5. Military exemption. [Repealed by Stats. 1988, Ch. 160, in effect January 1, 1989.]

32177.5. Military distilled spirits exemption. No tax shall be imposed upon the sale of distilled spirits by brandy manufacturers, distilled spirits manufacturers, rectifiers, importers, and distilled spirits wholesalers to the following listed instrumentalities of the armed forces of the United States organized under Army, Air Force, Navy, Marine Corps, or Coast Guard regulations and located upon territory within the geographical boundaries of the state:

(a) Army, Air Force, Navy, Marine Corps, and Coast Guard exchanges.

(b) Officers', noncommissioned officers', and enlisted men's clubs or messes.

If any manufacturer, rectifier, importer or wholesaler has paid the tax on alcoholic beverages, except beer and wine, thereafter sold to an instrumentality of the Armed Forces so located, the taxpayer may claim and shall be allowed credit with respect to the tax so paid in any report filed or assessment paid under this part.

History.—Added by Stats. 2000, Ch. 609 (SB 607), operative January 1, 2001.

32178. Wine rectifier's exports. Any wine grower may claim and shall be allowed credit in any tax report filed or assessment made under this part with respect to the tax paid by him on wine sold to a wine rectifier and which has been exported from this State by the wine rectifier or sold for export by the wine rectifier and thereafter actually exported from this State. The board shall make rules prescribing the procedure for claiming and allowance of the credit.

32179. Claim for exemption. Any claim for exemption from taxes under this article shall be made to the board in such manner as the board shall prescribe.

History.—Added by Stats. 1957, p. 966, in effect September 11, 1957.

CHAPTER 5. TAX ON DISTILLED SPIRITS

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| Article 1. | Imposition of Tax. §§ 32201–32203. |
| 2. | Presumptions and Exemptions. §§ 32211–32214. |

Article 1. Imposition of Tax

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| § 32201. | Rate. |
| § 32202. | Tax on sales by common carriers. |
| § 32203. | Examination of reports. |

32201. Rate. An excise tax is imposed upon all distilled spirits sold in this state or pursuant to Section 23384 of the Business and Professions Code by manufacturers, distilled spirits manufacturer's agents, brandy manufacturers, rectifiers, or wholesalers, or sellers of distilled spirits selling distilled spirits with respect to which no tax has been paid within areas over which the federal government exercises jurisdiction, at the following rates:

On all distilled spirits of proof strength or less, two dollars (\$2) per wine gallon, and at a proportionate rate for any quantity, and on all nonliquid distilled spirits containing 50 percent or less alcohol by weight two cents (\$.02) per ounce avoirdupois, and at a proportionate rate for any quantity.

All distilled spirits in excess of proof strength, and all nonliquid distilled spirits containing more than 50 percent alcohol by weight, shall be taxed at double the above rate.

History.—Stats. 1955, p. 1859, operative September 7, 1955, but also operative July 1, 1955, as an amendment to former Section 24465 of the Business and Professions Code, increased the rate from 80 cents to \$1.50 and added subdivision (b). Stats. 1967, p. 2526, operative August 16, 1967, revised this section, increasing the rate to \$2.00 and making related changes in (b). Stats. 1978, Ch. 827, effective January 1, 1979, deleted "(a)" preceding "An excise tax" in the first paragraph, in the second paragraph substituted "two dollars (\$2)" for "one dollar and fifty cents (\$1.50)" deleted "until August 16, 1967, and on and after August 16, 1967, two dollars (\$2) per wine gallon" and substituted "and on all nonliquid distilled spirits containing 50 percent or less alcohol by weight two cents (\$.02) per ounce avoirdupois", added "and all nonliquid distilled spirits containing more than 50 percent alcohol by weight," following "proof strength" in the third paragraph and deleted subdivision (b).

Federal military reservations.—The sale of distilled spirits to a person on a military reservation over which the federal government has exclusive jurisdiction is subject to the tax imposed by the Alcoholic Beverage Control Act. *McKesson & Robbins, Inc. v. Collins*, (1937) 18 Cal.App.2d 648.

Tax collectible upon sale to retailer.—The tax is collectible upon sales from wholesalers to retailers. The tax is not collectible upon a sale by one wholesaler to another prior to a sale to a retailer. *People v. Tux Winery Co.*, (1937) 20 Cal. App.2d 700.

Yosemite National Park.—See note following Section 32151.

Additional excise taxes imposed on licensed wholesaler upheld.—The finding of the State Board of Equalization that the proper amount of taxes had not been paid by a wholesaler of distilled spirits, although not conclusive, should be upheld in the absence of a showing that it was arbitrary or capricious. Where an examination of the wholesaler's books showed a discrepancy between disbursements and returns and indicated that numerous sales were made unaccompanied by the necessary revenue stamps, as required by the former provisions of the Alcoholic Beverage Control Act, the board was not bound to grant allowances for gifts or exchanges in the absence of testimony establishing the facts respecting such transfers. *Empire Vintage Company v. Collins*, (1940) 40 Cal.App.2d 612. Supreme Court hearing denied November 14, 1940.

Deficiency assessments.—Even though prior to 1937 the State Board of Equalization was not expressly authorized to levy deficiency assessments against distilled spirits wholesalers who failed to pay the full amount of their tax, no assessment or reassessment was necessary to create the liability, as the Alcoholic Beverage Control Act itself levied the tax. Even if the power to assess a deficiency did not exist until 1937, the amendment of that year creating the procedure applies to liabilities existing prior to its effective date. *Rathjen Bros. Inc. v. Collins*, (1942) 50 Cal.App.2d 774.

Delivery of whisky to steamship company for sale on high seas.—Where a steamship company which was the holder of an importer's license and a retailer's distilled spirits license for specific boats mailed an order for whisky from its office in California to the seller's office, also in California, to be shipped from outside the State for delivery within this State, and where the whisky so shipped was stored within the State and was subsequently delivered to a ship of the buyer in a California port for sale to passengers thereon beyond the territorial jurisdiction of the United States, such transaction constituted a sale within the meaning of the Alcoholic Beverage Control Act (as it existed in 1935). *Gooderham and Worts, Ltd. v. Collins*, (1942) 50 Cal.App.2d 716. That case, together with *Rathjen Bros., Inc. v. Collins*, (1942) 50 Cal.App.2d 774, also holds that the fact that the whisky is sold in federal bond to a steamship company and that no federal excise tax is collected is immaterial to the question of liability for state excise tax.

Distilled spirits stamp requirements.—A licensed wholesaler who sold distilled spirits to retail licensees unaccompanied by excise stamps as required by the Alcoholic Beverage Control Act (as it read prior to 1941), is liable for tax imposed by the act. If the bottles were broken after the stamps were affixed, subsequent replacements should have been accompanied by stamps, but if the cases had not yet been broken the wholesaler could have properly replaced the broken goods and the stamps sent with the first shipment could have been used to pay the tax. *Tonklin Distributing Company, Inc. v. Collins*, (1942) 50 Cal.App.2d 790.

Deliveries in this State to out-of-state purchaser taxable.—Under the Alcoholic Beverage Control Act as it read prior to 1937, a transaction involving whisky constituted a sale thereof in this State so as to render the seller liable for excise taxes thereon, where the order for the liquor was solicited by the seller's salesman out of the State and by him delivered to the seller's place of business within this State, where the liquor was sold to an out-of-state purchaser not holding a license under the act, where the order called for "delivery 'FOB'" at the seller's warehouse in this State, and where, after the order had been filled therefrom and also delivered to the purchaser in this State, the liquor was transported out of the State by the purchaser's employees. The fact that a sale of alcoholic beverages is unlawful or unauthorized does not exempt it from the excise tax. *Gooderham and Worts, Ltd. v. Collins*, (1943) 59 Cal.App.2d 309.

Shipment to military reservation.—The levy of the excise tax upon the seller of whisky to the United States Army Medical Corps does not violate the implied immunity of the federal government from state taxation under the United States Constitution, and the fact that the tax may be passed on to the government in the purchase price does not invalidate the tax. *National Distillers Products Corporation v. State Board of Equalization*, (1947) 83 Cal.App.2d 35.

32202. Tax on sales by common carriers. An excise tax is levied on sales made in this State of distilled spirits by common carriers on board boats, trains, and airplanes, or by persons licensed to sell distilled spirits on board such boats, trains, and airplanes, at the same rates as set forth in Section 32201. On or before the first day of each month such common carriers and such other licensed persons shall forward to the board a report of the sales of distilled spirits so made in the calendar month preceding the previous calendar month, in such detail and form as the board may prescribe together with a payment sufficient to pay the tax on the sales.

History.—Stats. 1963, p. 2935, in effect September 20, 1963, deleted the word "verified" preceding "report" in the second sentence.

32203. Examination of reports. The board shall from time to time make examinations to determine the accuracy of the reports of sales

submitted by common carriers and by persons licensed to sell distilled spirits on board boats and trains operated by common carriers. The board may make such rules for the enforcement of the provisions of Section 32202 as it deems necessary to adequately insure the collection of the tax.

Article 2. Presumptions and Exemptions

§ 32211.	Presumption of sale.
§ 32212.	Exemptions; brandy
§ 32213.	Sales to passenger common carriers exempt.
§ 32214.	Credit; use in food products.

32211. Presumption of sale. It shall be presumed that all distilled spirits acquired by any taxpayer have been sold in this State by him unless one of the following is proved to the satisfaction of the board, in reports on forms prescribed by the board:

- (a) That the distilled spirits are still in the possession of the licensee.
- (b) That the distilled spirits have been sold or delivered to another licensed distilled spirits manufacturer, rectifier, importer, or wholesaler.
- (c) That the distilled spirits have been exported without this State or sold for export by the licensee making the report and actually exported from this State within 90 days from the date of the sale.
- (d) That prior to the termination of possession the distilled spirits have been lost through unintentional destruction.
- (e) That prior to the termination of possession there has been an unaccounted for loss, but the unaccounted for loss shall not exceed a tolerance to be fixed by the board.
- (f) That the distilled spirits are otherwise exempt from taxation under this part.

Presumptions favor distilled spirits deficiency assessments.—The burden of proving that distilled spirits were sold in nontaxable transactions is on the taxpayer and disposals of distilled spirits unaccounted for are subject to the excise tax. *Rathjen Bros., Inc. v. Collins*, (1942) 50 Cal.App.2d 774; *Sauers Wholesale Co. v. Collins*, (1942) 50 Cal.App.2d 786; *Tonkin Distributing Co., Inc. v. Collins*, 50 Cal.App.2d 790. Where the State Board of Equalization determines a deficiency in accordance with the procedure set forth in the statute by ascertaining and working from opening and closing inventories for a taxable period, the resulting figure is presumed under the statute to represent the amount of taxable sales. Should a taxpayer seek to recover deficiency taxes paid under protest he has the burden of proving that the figure thus arrived at is not correct. *Rathjen Bros., Inc. v. Collins*, (1942) 50 Cal.App.2d 765.

Rule-making power of board.—The State Board of Equalization is given power in the general enabling provision of Section 24.25 of the Alcoholic Beverage Control Act (predecessor to Section 32212 of this code) to prescribe the manner in which the taxpayer must furnish proof in rebuttal of the presumption provided in Section 24.2 of the act (predecessor to this section) and this power is not limited by Section 24.2, but is in addition to it. As part of such manner of proof the board can prescribe the time at which data on which the taxpayer relies must be furnished to it. *American Distilling Co. v. Johnson*, (1955) 132 Cal.App.2d 73.

32212. Exemptions; brandy. The tax is not imposed upon any distilled spirits specifically mentioned in subdivisions (a) to (f), inclusive, of Section 32211.

The tax is not imposed upon the sale of brandy to a licensee of another state pursuant to the provisions of Section 23108 of the Business and Professions Code.

Any claim for exemption from taxes under Section 32211 shall be made to the board in such manner as the board shall prescribe.

Forfeiture of exemption.—The authority given the State Board of Equalization in Section 24.25 of the Alcoholic Beverage Control Act (predecessor of this section) to make binding rules as to the manner of claiming an excise tax exemption extends to the whole procedure applicable to the claiming of such exemption, and by failing to comply with the provision of rule 54a (now rule 2563) of the board, requiring the filing of SBE Form 260 at the time of sale for proof of sales exported in vehicles owned by the purchaser, the taxpayer forfeited its claim of exemption, notwithstanding the fact that it furnished to the board proof of exportation upon said form prior to the hearing on the petition for redetermination of the additional tax. *American Distilling Co. v. Johnson*, (1955) 132 Cal.App.2d 73.

32213. Sales to passenger common carriers exempt. Whenever distilled spirits are sold by manufacturers, rectifiers, importers, or wholesalers to common carriers engaged in interstate or foreign passenger service for use or sale by the carriers partly within the State and partly without the State on board boats, trains, or airplanes, or to persons licensed to sell distilled spirits on board such boats, trains, or airplanes, the tax shall not be levied on the sales made by manufacturers, rectifiers, importers, or wholesalers.

32214. Credit; use in food products. If taxes have been paid on distilled spirits sold to a person who holds a permit and identification number authorizing the filing of a claim for drawback of federal distilled spirits excise taxes under the Federal Non-Beverage Drawback Regulations and the distilled spirits have been used in the manufacture of food products, the taxpayer may claim and shall be allowed credit with respect to the taxes in any report or return made under this part.

History.—Added by Stats. 1963, p. 2295, in effect September 20, 1963.

CHAPTER 5.5. SURTAX ON BEER, WINE, AND DISTILLED SPIRITS *

- Article 1. Imposition of the Surtax. §§ 32220-32223.
2. Disposition of Proceeds. § 32230.

Article 1. Imposition of the Surtax

- § 32220. Excise surtax.
§ 32221. Floor stock taxes.
§ 32222. Surtax in addition to other taxes.
§ 32223. Administration of surtax.

32220. Excise surtax. On and after July 15, 1991, an excise surtax is hereby imposed upon all beer and wine sold in this state by a manufacturer, winegrower, or importer, and upon all distilled spirits sold in this state by a manufacturer, distilled spirits manufacturer's agent, brandy manufacturer, winegrower, importer, rectifier, wholesaler, common carrier with respect to distilled spirits sales made upon boats, trains, and airplanes, or persons licensed to sell distilled spirits upon boats, trains, and airplanes, and upon sellers of beer, wine, or distilled spirits with respect to which no tax has been paid within areas over which the United States government exercises jurisdiction, at the following rates:

(a) On all beer, sixteen cents (\$0.16) per gallon and at a proportionate rate for any other quantity.

(b) On all still wines containing not more than 14 percent of absolute alcohol by volume, nineteen cents (\$0.19) per wine gallon and at a proportionate rate for any other quantity.

* Chapter 5.5 was added by Stats. 1991, Ch. 86, in effect June 30, 1991.

(c) On all still wines containing more than 14 percent of absolute alcohol by volume, eighteen cents (\$0.18) per wine gallon and at a proportionate rate for any other quantity.

(d) On sparkling hard cider, eighteen cents (\$0.18) per wine gallon and at a proportionate rate for any other quantity.

(e) On all distilled spirits of proof strength or less, one dollar and thirty cents (\$1.30) per wine gallon and at a proportionate rate for any other quantity.

(f) On all distilled spirits in excess of proof strength, two dollars and sixty cents (\$2.60) per wine gallon and at a proportionate rate for any other quantity.

History.—Stats. 1991, Ch. 88, in effect June 30, 1991, substituted “15” for “1” after “July” in the first and second sentences.

32221. Floor stock taxes. Except with respect to beer and wine in the internal revenue bonded premises of a manufacturer, and except with respect to distilled spirits in the possession of a distilled spirits manufacturer, distilled spirits manufacturer’s agent, brandy manufacturer, rectifier, wholesaler, or common carrier licensed to sell distilled spirits on board boats, trains, and airplanes, floor stock taxes are hereby imposed in amounts equal to the surtaxes imposed by Section 32220 upon all alcoholic beverages upon which the surtaxes have not been paid, that are in the possession or under the control of every person licensed under Division 9 (commencing with Section 23000) of the Business and Professions Code at 2:01 a.m. on July 15, 1991. On or before August 31, 1991, each person subject to the tax imposed by this section shall prepare and file with the State Board of Equalization, on a form prescribed by the board, a return showing the amount of units of beer, wine, sparkling hard cider, and distilled spirits possessed by him or her at 2:01 a.m. on July 15, 1991, that are subject to the tax imposed by this section, and any other information the board deems necessary for the proper administration of this chapter. The tax payer shall deliver the return, together with a remittance of the amount of tax due, to the office of the board on or before August 31, 1991.

History.—Stats. 1991, Ch. 88, in effect June 30, 1991, substituted “15” for “1” after “July” in the first and second sentences.

32222. Surtax in addition to other taxes. The taxes imposed by this article are in addition to any other tax imposed upon beer, wine, sparkling hard cider, or distilled spirits by this part.

32223. Administration of surtax. All the provisions of this part relating to excise taxes, with the exception of those contained in Chapter 10 (commencing with Section 32501), are applicable also to the taxes imposed by this article, to the extent that those provisions are not inconsistent with this article.

Article 2. Disposition of Proceeds

§ 32230. Disposition of proceeds.

32230. Disposition of proceeds. All surtaxes, interest, and penalties imposed and required to be paid under this chapter shall be made in remittances to the State Board of Equalization and shall be deposited in the General Fund.

CHAPTER 6. DETERMINATIONS

- Article 1. Returns and Payments. §§ 32251-32258.
- 1.1. Payment by Electronic Funds Transfer. §§ 32260-32263.
 2. Deficiency Determinations. §§ 32271-32273.
 3. Determinations if No Return Made. § 32291.
 4. Redeterminations. §§ 32301-32306.
 5. Jeopardy Determinations §§ 32311-32313.

Article 1. Returns and Payments

- § 32251. Due date; contents of return.
- § 32251.5. Quarterly or annual returns.
- § 32252. Interest and penalties.
- § 32253. Extension of time.
- § 32254. Interest. [Repealed.]
- § 32255. Reasonable cause for delay; penalty relief.
- § 32256. Relief from interest; disaster.
- § 32256.5. Relief of interest.
- § 32257. Reasonable reliance on written advice; relief of tax, penalty, and interest.
- § 32258. Relief of spouse.

32251. Due date; contents of return. The tax is a direct obligation of the taxpayer and is due and payable monthly on or before the 15th day of each calendar month. Each taxpayer, on or before the 15th day of each month shall make out a tax return for the preceding calendar month, in the form as prescribed by the board, which may include, but not be limited to, electronic media, showing the amount of beer or wine or distilled spirits sold in this state, the amount of tax for the period covered by the return, and any other information as the board deems necessary. The taxpayer shall deliver the return, together with a remittance of the amount of tax due, to the office of the board on or before the 15th day of the month. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, substituted “15th” for “fifteenth” after “before the” in the first, second and third sentences, substituted “in the form . . . electronic media” for “in such a form as is prescribed by the board,” after “calendar month” substituted “state” for “State” in the second sentence, and added the fourth sentence.

32251.5. Quarterly or annual returns. The board, if it deems it necessary in order to facilitate the collection of the amount of taxes, may require returns and payment of the amount of taxes for quarterly or annual periods depending on the principal place of business of the taxpayer, the amount of business done by the taxpayer, or the amount of taxes normally paid or payable by the taxpayer.

History.—Added by Stats. 1975, Ch. 1186, in effect January 1, 1976. Stats. 1995, Ch. 555, in effect January 1, 1996, deleted “Whenever the returns filed by a taxpayer report tax liabilities that average less than one hundred dollars (\$100) per month,” at the beginning of the section.

32252. Interest and penalties. (a) Any taxpayer who fails to pay any tax to the state or any amount of tax required to be collected and paid to the

state, except amounts of determinations made by the board under Article 2 (commencing with Section 32271) or Article 3 (commencing with Section 32291), within the time required shall pay a penalty of 10 percent of the amount of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable until the date of payment.

(b) Any person who fails to file a return in accordance with the due dates set forth in Sections 32251, or the due date established by the board in accordance with Section 32251.5 shall pay a penalty of fifty dollars (\$50).

(c) The penalties imposed by this section shall be limited to either the fifty dollars (\$50) provided in subdivision (b), or 10 percent of the tax provided in subdivision (a), whichever is greater.

History.—Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted “10” for “5” after “a penalty of”. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, substituted former sole paragraph which stated “If the tax is not paid to the board within the time prescribed for the payment of the tax, a penalty of 10 percent of the amount of the tax shall be added thereto on account of the delinquency” for subdivisions (a), (b), and (c).

32253. Extension of time. The board for good cause may extend for not to exceed one month the time for making any report or paying any tax. Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the tax would have been due without the extension to the date of payment.

History.—Stats. 1963, p. 1440, in effect September 20, 1963, substituted “one month” for “30 days” and “one-half of 1 percent per month or fraction thereof” for “6 percent per annum.” Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from.” Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . thereof” for “adjusted annual rate,” substituted “Section 6591.5” for “Section 19269.”

32254. Interest. [Repealed by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.]

32255. Reasonable cause for delay; penalty relief. (a) If the board finds that a person’s failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 32252, 32260, 32291, and 32305.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

History.—Added by Stats. 1963, p. 2846, in effect September 20, 1963. Stats. 1989, Ch. 768, in effect January 1, 1990, deleted “and” after “32291,” and added “, and 32305” after “32292”. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision letter designation (a) before first paragraph, added “32260” after “32252” in subdivision (a); added subdivision letter designation (b) before second paragraph; substituted “Except as provided in subdivision (c), any” for “Any” before “person seeking to be relieved”, added “or she” after “which he”, and added “or her” after “bases his” in subdivision (b); and added subdivision (c). Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, deleted “32292” after “32252, 32260, 32291,” in subdivision (a).

32256. Relief from interest; disaster. If the board finds that a person's failure to make a timely report or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 32252, 32253, 32260, and 32291.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 1981, Ch. 947, in effect January 1, 1982. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, added "32252" after "provided by Sections", deleted "32254" after "32253", and added "32260" after "32253" in the first paragraph; and added "or she" after "upon which he" and added "or her" after "bases his" in the second paragraph.

32256.5. Relief of interest. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted "this part" for "Sections 32254 and 32291" after "imposed on a person by" in subdivision (a).

32257. Reasonable reliance on written advice; relief of tax, penalty, and interest. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

History.—Added by Stats. 1990, Ch. 987, in effect January 1, 1991.

32258. Relief of spouse. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax, including interest, penalties, and other amounts, to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months, quarters, or years subject to this part, but shall not apply to a calendar month, quarter, or year that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a

manufacturer, winegrower, importer, or seller of beer or wine, or as a manufacturer, distilled spirits manufacturer's agent, brandy manufacturer, rectifier, wholesaler, or seller of distilled spirits to which the understatement is attributable. If neither spouse rendered substantial services as a manufacturer, winegrower, importer, or seller of beer or wine, or as a manufacturer, distilled spirits manufacturer's agent, brandy manufacturer, rectifier, wholesaler, or seller of distilled spirits, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for an unpaid tax or any deficiency, or any portion of either, attributable to an item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to January 1, 2008.

History.—Added by Stats. 2007, Ch. 342 (AB 1748), in effect January 1, 2008. Stats. 2008, Ch. 179 (SB 1498), in effect January 1, 2009, deleted “or not” after “into account whether” and substituted a comma for “(“ after “liability for tax” and for “)” after “and other amounts” in subdivision (a)(3); deleted “the provisions of” after “years subject to” and substituted “a” for “any” after “shall not apply to” in subdivision (c); deleted “or not” after “means whether” in subdivision (d); substituted “winegrower” for “wine-grower” after “service as a manufacturer,” and added “a” after “beer or wine, or as” in the first sentence of, and substituted “winegrower” for “wine-grower” after “services as a manufacturer,” and added “a” after “beer or wine, or as” in the second sentence to, subdivision (e); substituted “an” for “any” after “spouse liable for” and after “attributable to”, substituted a comma for “(“ after “unpaid tax or any” and “)” after “any portion of either” in subdivision (f); and substituted “January 1, 2008” for “the effective date of this section” after “liabilities arising prior to” in subdivision (h).

Article 1.1. Payment by Electronic Funds Transfer*

- § 32260. Electronic funds transfer payments.
- § 32261. Relief of penalty.
- § 32262. Definitions.
- § 32263. Electronic filing.

32260. Electronic funds transfer payments. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 32251). Payment is deemed

* Article 1.1 was added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.

complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 32271) or Article 3 (commencing with Section 32291), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 32252.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

32261. Relief of penalty. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 32260. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

32262. Definitions. (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or

similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) “Automated clearinghouse” means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) “Automated clearinghouse debit” means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person’s bank account and crediting the state’s bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the person through his or her own bank originates an entry crediting the state’s bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) “Fedwire transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state’s bank account. Electronic funds transfers pursuant to Section 32260 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

32263. Electronic filing. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

Article 2. Deficiency Determinations

§ 32271.	Deficiency.
§ 32272.	Limitation period.
§ 32272.1.	Limitations; deficiency determination; decedent.
§ 32273.	Waiver.

32271. Deficiency. If the board is dissatisfied with the return or returns filed or amount of tax paid to the state by any taxpayer, it may compute and determine the amount to be paid based upon any information available to it. One or more additional determinations may be made of the amount of tax due for one or for more than one period. The amount of tax so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the 15th day after the close of the period for which the amount of the tax, or any portion thereof, should have been reported until the date of payment. In making a determination, the board may offset overpayment for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments. If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or authorized rules, a penalty of 10 percent of the amount of the determination shall be added, plus interest as above provided. If any part of the deficiency for which a determination of an additional amount due is made is found to be occasioned by fraud or an intent to evade this part or authorized rules, a penalty of 25 percent of the amount of the determination shall be added, plus interest as above provided. The board shall give to the taxpayer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the taxpayer at his address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

History.—Stats. 1957, p. 2023, effective September 11, 1957, revised the provision regarding the complete mailing of the notice. Stats. 1974, Ch. 610, effective January 1, 1975, revised the provision regarding notice service of the notice of determination and deleted the reference to C.C.P. 1013. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1975, Ch. 1186, in effect January 1, 1976, substituted “period” for “month” and “period or periods” for “month or months.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from” in the third sentence. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . thereof” for “adjusted annual rate,” substituted “Section 6591.5” for “Section 19269,” changed “15th” to “fifteenth” before “day,” deleted “such” before “delivery” before last sentence.

Second deficiency assessment.—After expiration of the period within which the taxpayer may petition for reassessment of tax, the State Board of Equalization may make a second deficiency tax assessment for the same taxpaying period for which the board had previously made a deficiency assessment. *Wardall v. State of California*, (1947) 29 Cal.2d 639.

32272. Limitation period. Except in the case of a fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount should have been paid or the return was due, or within three years after the return was filed, whichever period expires later. In the case of failure to make a return, the notice of determination shall be mailed within eight years after the date the return was due.

History.—Stats. 1957, p. 2024, in effect September 11, 1957, substituted “fraud, intent to evade this part or authorized rules and regulations, or failure” for “fraudulent return or neglect or refusal” in first sentence and added second sentence. Stats. 1993, Ch. 1113, in effect January 1, 1994, substituted “paid or the . . . expires later” for “returned” in the first sentence.

32272.1. Limitations; deficiency determination; decedent. In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

History.—Added by Stats. 1968, p. 2450, in effect November 13, 1968.

32273. Waiver. If before the expiration of the time prescribed in Section 32272 for the mailing of a notice of deficiency determination the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

History.—Added by Stats. 1965, p. 4442, in effect September 17, 1965.

Article 3. Determinations If No Return Made

§ 32291. Failure to file return.

§ 32292. Penalty for failure to file. [Repealed.]

32291. Failure to file return. If any taxpayer fails to make a return required by this part, the board shall make an estimate, based upon any information available to it, for the period or periods with respect to which the taxpayer failed to make a return of all alcoholic beverages sold in this state by him or her. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state, adding to the sum thus fixed a penalty equal to 10 percent thereof. One or more determinations may be made of the amount of tax due for one or for more than one period. The amount of tax so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the 15th day of the month following the close of the period for which the amount of the tax, or any portion thereof, should have been returned until the date of payment. In making a determination the board may offset overpayments for a period or periods against underpayments for another period or periods and against interest and penalties on the underpayments. If

any part of the deficiency for which a determination is made is due to negligence or intentional disregard of this part or authorized rules, an additional penalty of 10 percent of the amount of the determination shall be added. If the neglect or refusal of a taxpayer to file a return as required by this part was due to fraud or an intent to evade the tax, there shall be added to the tax a penalty equal to 25 percent thereof in addition to the 10 percent penalty. The board shall give to the taxpayer written notice of the estimate and determination, the notice to be served personally or by mail in the same manner as prescribed for service of notice by Section 32271.

History.—Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1975, Ch. 1186, in effect January 1, 1976, substituted “period” for “month”, “period or periods” for “month or months”, and “of the calendar month following the close of the period” for “after the close of the month.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from” in the fourth sentence. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . thereof” for “adjusted annual rate” before “established,” substituted “Section 6591.5” for “Section 19269.” Stats. 1996, Ch. 1087, in effect January 1, 1997, added “or her” after “state by him” in the first sentence and substituted “10” for “5” after “penalty equal to” in the second sentence and after “addition to the” in the seventh sentence.

32292. Penalty for failure to file. [Repealed by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.]

Article 4. Redeterminations

- § 32301. Petition for redetermination.
- § 32301.5. Form and content.
- § 32302. Oral hearing.
- § 32303. Decrease or increase of determination.
- § 32304. Finality date of order or decision.
- § 32305. Due date of determinations; penalty.
- § 32306. Service of notice.

32301. Petition for redetermination. Any person from whom an amount is determined to be due under Article 2 (commencing with Section 32271) or 3 (commencing with Section 32291) or any person directly interested may petition for a redetermination thereof within 30 days after service upon him or her of notice of the determination. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration thereof.

History.—Stats. 1957, p. 2024, in effect September 11, 1957, substituted “30” for “15” days. Stats. 1967, p. 2329, in effect November 8, 1967, deleted all former language following “expiration thereof” and reenacted same as Sections 32302–32306. Stats. 1982, Ch. 454, in effect January 1, 1983, substituted “Article 2 (commencing with Section 32271) or 3 (commencing with Section 32291)” for “Article 2 or 3 of this chapter” after “under” and added “or her” after “him” in the first sentence.

32301.5. Form and content. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

History.—Added by Stats. 1967, p. 2329, in effect November 8, 1967.

32302. Oral hearing. If a petition for redetermination is filed within the 30-day period, the board shall reconsider the amount determined to be due, and if the person has so requested in his petition, shall grant him an oral

hearing and shall give him 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

History.—Added by Stats. 1967, p. 2329, in effect November 8, 1967, formerly part of Section 32301.

32303. Decrease or increase of determination. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the 25 percent penalty imposed by Section 32271 or Section 32291 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted within eight years after the date the return for the period for which the increase is asserted was due.

History.—Added by Stats. 1967, p. 2329, in effect November 8, 1967, formerly part of Section 32301. Stats. 1969, p. 895, in effect November 10, 1969, revised the first sentence and added the second sentence.

32304. Finality date of order or decision. The order or decision of the board upon a petition for redetermination shall become final 30 days after service upon the petitioner of notice thereof.

History.—Added by Stats. 1967, p. 2329, in effect November 8, 1967, formerly part of Section 32301.

32305. Due date of determinations; penalty. All amounts determined to be due by the board under Article 2 or 3 of this chapter are due and payable at the time they become final, and if not paid when due and payable, there shall be added thereto a penalty of 10 percent of the amount determined to be due.

History.—Added by Stats. 1967, p. 2330, in effect November 8, 1967, formerly part of Section 32301.

32306. Service of notice. Any notice required by this section shall be served personally or by mail in the same manner as prescribed for service of notice by Section 32271.

History.—Added by Stats. 1967, p. 2330, in effect November 8, 1967, formerly part of Section 32301.

Article 5. Jeopardy Determinations

- § 32311. Basis for jeopardy determination.
- § 32312. Petition for redetermination; security.
- § 32313. Administrative hearing.
- § 32320. Penalty interest rates. [Repealed.]

32311. Basis for jeopardy determination. If the board believes that the collection of any amount of tax will be jeopardized by delay, it shall thereupon make a determination of the amount of tax due, noting that fact upon the determination, and the amount of tax shall be immediately due and payable. If the amount of the tax, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the taxpayer of notice of the determination, the determination becomes final, and the delinquency penalty and interest provided in Section 32252 shall attach to the amount of tax specified therein.

History.—Stats. 2000, Ch. 923 (AB 2894), substituted "Section" for "Sections" after "interest provided in", deleted "and 32254" after "provided in Section 32252" in the second sentence.

32312. Petition for redetermination; security. The taxpayer against whom a jeopardy determination is made may file a petition for the redetermination thereof, pursuant to Article 4 of this chapter, with the board within 10 days after the service upon him of notice of the determination, but he shall within the 10-day period deposit with the board such security as it deems necessary to insure compliance with the provisions of this part. The security may be sold by the board at public sale if it becomes necessary in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed for service of notice by Section 32271. Upon any such sale, the surplus, if any, above the amount due under this division shall be returned to the person who deposited the security.

History.—Stats. 1967, p. 2330, in effect November 8, 1967, added “pursuant to Article 4 of this chapter.”

32313. Administrative hearing. In accordance with such rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

- (a) To establish that the determination is excessive; or
- (b) To establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person; or
- (c) To request the release of all or a part of the property to the person; or
- (d) To request a stay of collection activities. The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. No security need be posted to file the application and to obtain this hearing. However, if the person does not deposit within the 10-day period prescribed in Section 32312, such security as the board may deem necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect provisions of Section 32311 relating to the finality date of the determination or to penalty or interest.

History.—Added by Stats. 1977, Ch. 329, effective January 1, 1978.

32320. Penalty interest rates. [Repealed by Stats. 1985, Ch. 20, operative July 1, 1985.]

CHAPTER 7. COLLECTION OF TAX

- Article 1. Suit for Tax. §§ 32351–32352.
- 2. Judgment for Tax. §§ 32361–32364.
- 2.5. Warrant for Collection. §§ 32365–32367.
- 3. Seizure and Sale. §§ 32371–32374.
- 4. Miscellaneous. §§ 32381–32389.5.

Article 1. Suit for Tax

- § 32351. Action to collect tax.
- § 32352. Certificate of delinquency.

32351. Action to collect tax. The board may bring such legal actions as are necessary to collect any deficiency in the tax required to be paid, and, upon the board's request, the Attorney General shall bring the actions.

32352. Certificate of delinquency. In any suit brought to enforce the rights of the state with respect to taxes, a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the tax, of the delinquency of the amount of tax, interest, and penalty set forth therein, and of compliance by the board with all provisions of this part in relation to the computation and levy of the tax. In the action a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure without the showing required by Section 485.010 of the Code of Civil Procedure.

History.—Stats. 1974, Ch. 1516, effective January 1, 1975, deleted the statement that no bond or affidavit was required previous to the issuing of the attachment, and added the proviso that the writ of attachment may be issued in the described manner.

Article 2. Judgment for Tax

- § 32361. Summary judgment.
- § 32362. Abstract of judgment; lien.
- § 32363. Liens; perfection and enforceability of.
- § 32364. Release of liens.

32361. Summary judgment. Whenever any tax, interest, or penalty is not paid when due, the board may file in the office of the County Clerk of Sacramento County or any other county a certificate specifying the amount of the tax, interest, and penalty due, the name and last known address of the taxpayer liable for it, that the board has complied with all the provisions of this part in relation to the computation and levy of the tax, and requesting that judgment be entered against the taxpayer in the amount of the tax, interest, and penalty set forth in the certificate. The county clerk immediately upon the filing of the certificate shall enter a judgment for the people of the State of California against the taxpayer in the amount of the tax, interest, and penalty set forth in the certificate. The judgment may be filed by the county clerk in a loose-leaf book entitled "Special Judgment for State Excise Tax."

32362. Abstract of judgment; lien. An abstract or copy of the judgment entered under Section 32361 may be recorded with the county recorder of any county, and from the time of such recording, the amount of the taxes, interest, and penalty set forth in the judgment shall constitute a lien upon all the real property owned by the taxpayer in the county or which he may acquire afterwards and before the lien expires, which lien shall have the force, effect, and priority of a judgment lien and shall continue for 10 years from the time of the recording of the abstract unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording of the abstract or within 10 years from the date of the last extension

of the lien, be extended by recording a new abstract in the office of the county recorder of any county and from the time of such recording, the lien shall be extended to the real property in such county for 10 years unless sooner released or otherwise discharged. Execution shall issue upon such a judgment upon the request of the board in the same manner as execution may issue upon other judgments, and sales shall be held under the execution as prescribed in the Code of Civil Procedure. In all proceedings under this section the board shall act on behalf of the people of the State of California.

History.—Stats. 1957, p. 2220, in effect September 11, 1957, added clause beginning with “and shall continue” to end of first sentence and added the second sentence. Stats. 1965, p. 2072, in effect September 17, 1965, substituted “10” years for “five” years in the first two sentences.

32363. Liens; perfection and enforceability of. (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. Such a lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent;

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board;

(3) For amounts determined under Section 32311 (pertaining to jeopardy assessments), the date the notice of the board’s finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

History.—Added by Stats. 1977, Ch. 481, operative July 1, 1978. Stats. 1979, Ch. 322, effective January 1, 1980, changed wording of second paragraph of (a), deleted reference to judgment creditors in second paragraph of (f). Stats. 1980, Ch. 600, operative January 1, 1981, deleted part of first sentence following “lien”; substituted present second sentence for former second sentence in (a); renumbered second paragraph of (a) to (b); deleted former (b), (c), (d), (e), (f).

32364. Release of liens. (a) If the board determines that the amount of tax, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the tax, interest, and penalties, the board may at any time release all or any portion of the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds that the liability represented by the lien imposed under this article, including any interest accrued thereon, is legally unenforceable, the board may release the lien.

(c) A certificate by the board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

History.—Added by Stats. 1980, Ch. 600, operative January 1, 1981. Stats. 2006, Ch. 538 (SB 1852), in effect January 1, 2007, substituted “the” for “such” after “conclusive evidence that” in subdivision (c).

Article 2.5. Warrant for Collection

- § 32365. Warrant; time of issuing.
- § 32366. Fees and expenses.
- § 32367. Collection of fees.

32365. Warrant; time of issuing. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording of an abstract under Section 32362 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

History.—Added by Stats. 1957, p. 2024, in effect September 11, 1957. Stats. 1965, p. 2047, in effect September 17, 1965, substituted “10” years for “three” years in the first sentence. Stats. 1977, Ch. 481, operative July 1, 1978, added a comma following “paid” on the third line, removed a comma following “32362” on the fourth line and added “or the recording or filing of a notice of state tax lien under Section 32363.”. Stats. 1980, Ch. 600 operative January 1, 1981, added “last” following “32362 or the ” and substituted “Section 7171 of the Government Code” for “Section 32363”. Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal or constable” after “to any sheriff” in the second sentence.

32366. Fees and expenses. The board may pay or advance to the sheriff or marshal, the same fees, commissions, and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.—Added by Stats. 1957, p. 2025, in effect September 11, 1957. Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal or constable” after “to the sheriff” and added “or her” after “expenses for his” in the first sentence.

32367. Collection of fees. The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him by virtue of the warrant or in any other manner provided in this part for the collection of the tax.

History.—Added by Stats. 1957, p. 2025, in effect September 11, 1957.

Article 3. Seizure and Sale

- § 32371. Seizure and sale.
- § 32372. Notice of sale.
- § 32373. Bill of sale; deed.
- § 32374. Disposition of proceeds.

32371. Seizure and sale. Whenever any taxpayer is delinquent in the payment of the tax, the board or its authorized representative may seize any property, real or personal, of the taxpayer, and sell at public auction the property seized, or a sufficient portion thereof, to pay the tax due, together with any penalties imposed for the delinquency and all costs that have been incurred on account of the seizure and sale.

32372. Notice of sale. Notice of the sale, and the time and place thereof, shall be given to the delinquent taxpayer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner:

The notice shall be personally served or enclosed in an envelope addressed to the taxpayer or other person at his or her last known residence or place of business in this state. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including taxes, interest, penalties, and costs, the name of the taxpayer, and the further statement that unless the amount due is paid on or before the time fixed in the notice for the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

History.—Stats. 1957, p. 1047, in effect September 11, 1957, substituted “pursuant to Section 6062 of the Government Code” for “for at least 10 days before the date set for the sale in a newspaper of general circulation published” in second sentence. Stats. 1990, Ch. 1528, in effect January 1, 1991, deleted “Written” before “Notice”, “intended” before “sale, and”, substituted “who” for “appearing of record to”, added “of record” after “interest”, substituted “20” for “10” and “in the following manner: The notice shall be personally served or enclosed” for “by enclosing the notice”, added “or other person” and “or her”, and deleted “as appears upon the records of the board, if any, and depositing it in the United States registered mail, postage prepaid.” after “state” in the first sentence; deleted “also” before “be published”, substituted “6063” for “6062”, substituted “a newspaper of general circulation published in the city” for “the county” deleted “seized is to be sold” before “a newspaper”, and added “or a part thereof is situated if any part thereof is situated in a city or, if not”, substituted “a” for “If there is no” combining sentence two with former sentence three, added “published” after circulation”, added “in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:”, added subdivisions (a) and (b), created new paragraph with the former last sentence; substituted “due, including” for “of the” after “amount”, added “interest” after “taxes”; substituted “amount due is” for “taxes, penalties, and costs are” in the former last sentence.

32373. Bill of sale; deed. At the sale the property shall be sold by the board or by its authorized agent in accordance with law and the notice, and the board shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the taxpayer.

History.—Stats. 1982, Ch. 497, in effect January 1, 1983, operative July 1, 1983, deleted “subject . . . execution” after “purchaser” in the second sentence.

32374. Disposition of proceeds. If upon the sale the moneys received exceed the amount of all license taxes, penalties, and costs due the state from the taxpayer, the board shall return the excess to him or her and obtain his or her receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest, the board shall withhold any excess pending a determination of the rights of the respective parties to the property by a court of competent jurisdiction. If for any reason

the receipt of the taxpayer is not available, the board shall deposit the excess moneys with the Controller, as trustee for the owner, subject to the order of the taxpayer, his or her heirs, successors, or assigns.

History.—Stats. 1996, Ch. 860, in effect January 1, 1997, substituted “state” for “State” after “costs due the”, and added “or her” after “excess to him” and after “and obtain his”, in the first sentence, added “or her” after “notice of his”, and substituted “to the property” for “thereto” after “the respective parties”, in the second sentence, substituted “Controller” for “State Treasurer” after “moneys with the”, and added “or her” after “the taxpayer, his”, in the last sentence.

Article 4. Miscellaneous

§ 32381.	Notice to withhold payments.
§ 32382.	No transfer after notice.
§ 32383.	Advise board after notice.
§ 32384.	Liability for transfer after notice.
§ 32385.	Remedies cumulative.
§ 32386.	Priority of taxes. [Repealed.]
§ 32386.	Priority of taxes.
§ 32387.	Notice of levy.
§ 32387.5.	Employer withheld earnings.
§ 32388.	Furnishing of partnership agreement.
§ 32389.	Installment payment agreement.
§ 32389.5.	Installment payment annual statement.

32381. Notice to withhold payments. If any taxpayer is delinquent in the payment of any obligations imposed by this part, or in the event a determination has been made against such a taxpayer which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or within 10 years after the last recording of an abstract or copy of judgment under Section 32362 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the taxpayer, or owing any debts to the taxpayer. In the case of any state officer, department, or agency, the notice shall be given to such officer, department, or agency prior to the time it presents the claim of the delinquent taxpayer to the State Controller.

History.—Stats. 1957, p. 2025, in effect September 11, 1957, amended the original section. Stats. 1963, p. 2936, in effect September 20, 1963, completely revised the original section. Stats. 1971, Ch. 1634, operative on and after January 1, 1972, and shall be applicable only with respect to certificates of lien or abstracts of judgment filed on or after that date. Substitutes “within 10 years after payment” for “within 3 years after payment”. Stats. 1977, Ch. 481, operative July 1, 1978, deleted a comma following “32362” in the sixth line and added “or the recording or filing of a notice of state tax lien under Section 32363”. Stats. 1978, Ch. 827, effective January 1, 1979, substituted “first-class” for “registered”. Stats. 1980, Ch. 600, operative January 1, 1981, added “last” following “32362 or the” and substituted “Section 7171 of the Government Code” for “Section 32363”.

32382. No transfer after notice. After receiving the notice the person so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires the earlier.

History.—Added by Stats. 1963, p. 2936, in effect September 20, 1963, which also renumbered the original section as 32385.

32383. Advise board after notice. All persons so notified shall forthwith after receipt of the notice advise the board of all credits, other

personal property, or debts in their possession, under their control, or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall state the amount, interest and penalty due from the person and shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of two times the amount, interest and penalty due from the person.

History.—Added by Stats. 1963, p. 2937, in effect September 20, 1963, which also renumbered the original section as 32386. Amended by Stats. 1972, Ch. 103, operative July 1, 1973, which added “shall state the amount, interest and penalty due from the person and” and the third sentence.

32384. Liability for transfer after notice. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid he shall be liable to the State for any indebtedness due under this part from the person with respect to whose obligation the notice was given if solely by reason of such transfer or disposition the State is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

History.—Added by Stats. 1963, p. 2937, in effect September 20, 1963.

32385. Remedies cumulative. The remedies of the State provided for in this chapter are cumulative, and no action taken by the board or Attorney General constitutes an election by the State or any of its officers to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

History.—Formerly Section 32382, this section was renumbered by Stats. 1963, p. 2936, in effect September 20, 1963.

32386. Priority of taxes. [Repealed by Stats. 1977, Ch. 481, operative July 1, 1978.]

32386. Priority of taxes. The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

- (a) Whenever the person is insolvent.
- (b) Whenever the person makes a voluntary assignment of his assets.
- (c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.
- (d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

This section does not give the state a preference over a lien or security interest which was recorded or perfected prior to the time when the state records or files its lien as provided in Section 7171 of the Government Code.

The preference given to the state by this section is subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

History.—Added by Stats. 1977, Ch. 481, operative July 1, 1978. Stats. 1980, Ch. 600, operative January 1, 1981, substituted “a lien” for “any lien” and “as provided in Section 7171 of the Government Code” for “pursuant to subdivision (b) or (c) of Section 32363” in the second paragraph and added third paragraph.

Text of section operative through June 30, 2001

32387. Notice of levy. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a taxpayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the taxpayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person’s possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term “payments” does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term “payments” does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the consumer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1982, Ch. 1589, in effect January 1, 1983. Stats. 1993, Ch. 1113, in effect January 1, 1994, added "(a)", added a comma following "The board may", deleted a comma following "notice of levy", substituted "these" for "such" after "withhold from", substituted "the" for "such" after "due from", and substituted "the" for "such" after "board at" in the first paragraph; added "(b)"; and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "payments, credits, or other payments," for "credits" after "their control, any", substituted "time" for "times as" after "board at the" in the first sentence, and added "The notice of . . . in subdivision (b)." as the second sentence to subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d).

Text of section operative July 1, 2001

32387. **Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a taxpayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the taxpayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph

(29) of subdivision (a) of Section 9102 of the Commercial Code. The term “payments” does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the consumer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1982, Ch. 1589, in effect January 1, 1983. Stats. 1993, Ch. 1113, in effect January 1, 1994, added “(a)”, added a comma following “The board may”, deleted a comma following “notice of levy”, substituted “these” for “such” after “withhold from”, substituted “the” for “such” after “due from”, and substituted “the” for “such” after “board at” in the first paragraph; added “(b)”; and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted “payments, credits, or other payments,” for “credits after “their control, any”, substituted “time” for “times as” after “board at the” in the first sentence, and added “The notice of . . . in subdivision (b).” as the second sentence to subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d). Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, but operative July 1, 2001, substituted “paragraph (29) of subdivision (a) of Section 9102” for “Section 9105” after “as defined in” in subdivision (d).

32387.5. Employer withheld earnings. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a manufacturer or other person liable for any amount under this part that the person’s employer withheld earnings for taxes pursuant to Section 32387 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board’s determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person’s account shall be immediately credited with an amount

equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

32388. Furnishing of partnership agreement. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.

32389. Installment payment agreement. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 32305.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), added subdivision (e).

32389.5. Installment payment annual statement. The board, beginning no later than July 1, 2000, shall provide each taxpayer who has an installment payment agreement in effect under Section 32389 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

CHAPTER 8. OVERPAYMENTS AND REFUNDS

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| Article 1. | Claim for Refund. §§ 32401–32407. |
| 2. | Suit for Refund. §§ 32411–32418. |
| 3. | Recovery of Erroneous Refunds. §§ 32431–32433. |
| 4. | Cancellations. § 32440. |

Article 1. Claim for Refund

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| § 32401. | Credits and refunds. |
| § 32402. | Claim; limitation period. |
| § 32402.1. | Claim limitation; financially disabled. |
| § 32402.2. | Overpayments from levies or liens. |
| § 32403. | Failure to file claim. |
| § 32404. | Notice disallowing claim. |
| § 32405. | Interest. |
| § 32406. | Disallowance of interest. |
| § 32407. | Refunds on certain losses. |

32401. Credits and refunds. If the board determines that any amount of tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records and certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1961, p. 1253, in effect September 15, 1961, added the paragraph which permits the board to credit or refund overpaid alcoholic beverage taxes of \$100 or less without approval of the State Board of Control. Stats. 1963, p. 3114, in effect September 20, 1963, added “from whom the excess amount was collected or by whom it was paid” in the second sentence of the first paragraph, and substituted “two hundred fifty dollars (\$250)” for “one hundred dollars (\$100)” in the second paragraph. Stats. 1965, p. 2058, in effect September 17, 1965, substituted “one thousand dollars (\$1,000)” for “two hundred fifty dollars (\$250)” in the second paragraph. Stats. 1977, Ch. 921, operative January 1, 1978, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)”. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” in second paragraph. Stats. 1988, Ch. 1029, in effect January 1, 1989, added “or her” following “his” in the first paragraph and substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” following “amount not exceeding” and added “or

her” following “his” in the second paragraph. Stats. 1994, Ch. 726, in effect September 22, 1994, substituted “, and credit the excess amount collected or paid” for “. If approved by the State Board of Control the excess amount collected or paid shall be credited” after “by whom paid”; added “Any proposed determination . . . of that determination.” as the second sentence; deleted the second paragraph which read: “In the case, however, of a determination by the board that an amount not exceeding fifty thousand dollars (\$50,000) was not required to be paid under this part, the board without obtaining the approval of the State Board of Control may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors.” Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “its records and certify” for “the records of the board, certify to the State Board of Control” after “that fact in” in the first sentence.

Note.—Stats. 1971, p.1784, in effect October 6, 1971, provides that licensees may file a claim for refund of tax paid on alcoholic beverages destroyed or damaged so that they cannot be sold as a result of the earthquakes which occurred in southern California between January 1, 1971, and March 1, 1971. No refund shall be allowed or approved after one year from the effective date of this act unless a claim has been filed within such period.

32402. Claim; limitation period. (a) Except as provided in subdivision (b) no refund shall be approved by the board after three years from the 15th day of the calendar month following the close of the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 32271), Article 3 (commencing with Section 32291), or Article 5 (commencing with Section 32311) of Chapter 6 after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period unless a claim for credit is filed with the board within that period, or unless the credit relates to a period for which a waiver is given pursuant to Section 32273.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 32273, if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

History.—Stats. 1965, p. 4442, in effect September 17, 1965, revised this section to provide for a credit and refund when a waiver is given pursuant to § 32273. Stats. 1975, Ch. 1186, in effect January 1, 1976, substituted “of the calendar month following the close of the period” for “after the close of the monthly period.” Stats. 1982, Ch. 454, in effect January 1, 1983, substituted “Article 2 (commencing with Section 32271), 3 (commencing with Section 32291) or 5 (commencing with Section 32311) of Chapter 6” for “Article 2, 3 or 5 of Chapter 6 of this part” after “under” in the first sentence in subdivision (a) and made numerous grammatical corrections throughout this section. Stats. 2001, Ch. 543 (SB 1185), in effect January 1, 2002, substituted “after” for “within” after “of Chapter 6”, substituted “from the date” for “after” after “six months”, and added “or after six months from the date of overpayment” after “the determinations become final” in the first sentence of subdivision (a). Stats. 2002, Ch. 664 (AB 3034), in effect January 1, 2003, added “Article” after “Section 32271,” in, added a comma after “Section 32291”, and added “Article” after “Section 32291), or” in, subdivision (a).

32402.1. Claim limitation; financially disabled. (a) The limitation period specified in Section 32402 shall be suspended during any period of a person’s life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existences thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including *res judicata*, as of the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

32402.2. Overpayments from levies or liens. Notwithstanding Section 32402, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007.

32403. Failure to file claim. Failure to file a claim within the time prescribed in this article constitutes a waiver of all demands against the State on account of the overpayment.

32404. Notice disallowing claim. Within 30 days after disallowing any claim in whole or in part, the board shall serve written notice of its action on the claimant, such service to be made as provided by Section 32271.

32405. Interest. Interest shall be computed, allowed, and paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5, from the 16th day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 15th day of the calendar month following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

History.—Stats. 1963, p. 3114, in effect September 20, 1963, substituted "15th" for "fifteenth" in the first sentence and in subdivision (a). Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted "1 percent" for "one-half of 1 percent." Stats. 1975, Ch. 1186, in effect January 1, 1976, substituted "period" for "monthly period." Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate . . . month" before "from" in the first sentence. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted "modified . . . month" for "adjusted annual rate" before "established," substituted "Section 6591.5" for "Section 19269." Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted "16th" for "15th" after "from the," substituted "during" for "for" after "period," and substituted ". In addition, a" for "but no" in the first sentence; and added "as follows" after "paid" in the second paragraph. Stats. 1996, Ch. 320, in effect January 1, 1997, deleted "or the date upon which the claim is certified to the State Board of Control, whichever date is the earlier" after "may be filed" in subdivision (a). Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added ", if he or she has not already filed a claim," after "which the claimant" and added "or the date . . . date is earlier" after "may be filed" in subdivision (a).

32406. Disallowance of interest. (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

History.—Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added subdivision designation “(a)” and added subdivision (b).

32407. Refunds on certain losses. (a) The State Board of Equalization shall refund without interest to the licensee the amount of the tax imposed under this part with respect to the alcoholic beverages and which has been paid by the licensee as part of his purchase price of the alcoholic beverages, when such beverages were lost, rendered unmarketable, or condemned by a duly authorized official by reason of:

(1) Fire, flood, casualty, or other disaster, or

(2) Breakage, destruction, or other damage (but not including theft) resulting from vandalism, malicious mischief, or insurrection if such disaster or damage occurred in this state and if such beverages were held and intended for sale at the time of such disaster or other damage. The payments provided for in this section shall be made to the person holding such beverages for sale at the time of such disaster or other damage.

(b) The State Board of Equalization may approve claims for refunds without interest under this section upon proof satisfactory to it that the alcoholic beverages were destroyed or damaged so that they could not be sold and that the licensee has not otherwise been compensated for the loss in the amount of the tax included in the purchase price paid for the alcoholic beverages. A claim for refund under this section shall be in such form and accompanied by such proof as the State Board of Equalization may require.

(c) No claim shall be allowed under this section unless such claim is filed within six months after the date on which such beverages were lost, rendered unmarketable, or condemned by a duly authorized official.

(d) No claim of less than two hundred fifty dollars (\$250) shall be allowed under this section with respect to any disaster or other damage.

History.—Added by Stats. 1979, Ch. 633, operative April 1, 1980.

Article 2. Suit for Refund

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| § 32411. | Enjoining collection forbidden. |
| § 32412. | Necessity for refund claim. |
| § 32413. | Suit for refund. |
| § 32414. | When no decision on refund claim. |
| § 32415. | Failure to bring timely suit. |
| § 32416. | Crediting judgment to taxes due. |
| § 32417. | Interest on judgment. |
| § 32418. | Judgment for assignee forbidden. |

32411. Enjoining collection forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or

proceeding in any court against this State or against any officer of the State to prevent or enjoin the collection of any tax sought to be collected.

32412. Necessity for refund claim. No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed.

32413. Suit for refund. Within 90 days after the mailing of the notice of the board's action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

32414. When no decision on refund claim. If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

32415. Failure to bring timely suit. Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the State on account of any alleged overpayments.

32416. Crediting judgment to taxes due. If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any taxes due from the plaintiff, and the balance shall be refunded to the plaintiff.

32417. Interest on judgment. In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

History.—Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted "12 percent" for "6 percent." Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate . . . annum" before "upon". Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted "modified . . . annum" for "adjusted annual rate," substituted "Section 6591.5" for "Section 19269."

32418. Judgment for assignee forbidden. A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any tax paid when the action is brought by or in the name of an assignee of the taxpayer paying the tax or by any person other than the person who has paid the tax.

Article 3. Recovery of Erroneous Refunds

- § 32431. Action by Controller.
- § 32432. Place of trial.
- § 32432. Interest on erroneous refunds.
- § 32433. Rules of procedure, etc.

32431. Action by Controller. (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 32271) or Article 5 (commencing with Section 32311) of Chapter 6. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, added subdivision designation "(a)", substituted "that" for "which" after "or part thereof", and deleted ", and the action shall be tried in the County of Sacramento unless the court, with the consent of the Attorney General, orders a change of place of trial. The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedures relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings" after "State of California" in subdivision (a), and added subdivision (b).

Note.—SEC. 61. of Stats. 1998, Ch. 609 (SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

32432. Place of trial. In any action brought pursuant to subdivision (a) of Section 32431, the court may, with the consent of the Attorney General, order a change in the place of trial.

History.—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

32432. Interest on erroneous refunds. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 32431, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 32431 on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

32433. Rules of procedure, etc. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 32431, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

History.—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

Article 4. Cancellations

§ 32440. Cancellation of determination.

32440. Cancellation of determination. If any amount has been illegally determined, either by the person filing the return or by the board, the

board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and shall authorize the cancellation of the amount upon the records of the board. Any proposed cancellation by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1961, p. 1252, in effect September 15, 1961, added the provision for cancellation by the board of illegally determined amounts of \$100 or less without the approval of the State Board of Control. Stats. 1963, p. 3114, in effect September 20, 1963, substituted “two hundred fifty dollars (\$250)” for “one hundred dollars (\$100)” in the first and last sentences. Stats. 1965, p. 2058, in effect September 17, 1965, substituted “one thousand dollars (\$1,000)” for “two hundred fifty dollars (\$250)” in the first and last sentences. Stats. 1977, Ch. 921, operative January 1, 1978, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)”. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” after “in excess of” and “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” after “not exceeding.” Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” before “has been illegally determined” in the first and last sentences. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted “in excess of fifty thousand dollars (\$50,000)” after “If any amount”; deleted “to the State Board of Control” after “board shall certify”; deleted “. . . If the State Board of Control approves, it” after “determination was made”; and substituted “Any proposed determination . . . of that determination.” for “If an amount not exceeding fifty thousand dollars (\$50,000) has been illegally determined, either by the person filing a return or by the board, the board without certifying this fact to the State Board of Control shall authorize the cancellation of the amount upon the records of the board.”

CHAPTER 9. ADMINISTRATION

- Article 1. Administration §§ 32451–32457.
- 2. The California Taxpayers’ Bill of Rights §§ 32460–32476.

Uncodified Sections

- 1. Multiagency task force.

Article 1. Administration

- § 32451. Rules.
- § 32452. Board may require reports.
- § 32452.1. Liter conversion factor.
- § 32453. Examining books.
- § 32454. Administrative representatives.
- § 32455. Disclosure of information.
- § 32455.5. Information confidential; tax preparer.
- § 32456. Certificate of notice.
- § 32457. Vendor’s Report of Beer Shipments.

32451. Rules. The board shall enforce the provisions of this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part.

32452. Board may require reports. In addition to any other reports required under this part, the board may, by rule and otherwise, require additional, other, or supplemental reports from alcoholic beverage licensees, common and private carriers, and other persons and prescribe the form, including verification, of the information to be given on, and the times for filing of, such additional, other, or supplemental reports. The failure or refusal of any person to render the reports required under this section is a misdemeanor.

32452.1. Liter conversion factor. For all purposes of this part, when records are maintained in liters the equivalent measure in wine gallons shall be determined by multiplying total liters by a conversion factor of 0.26417 for wine, and by a conversion factor of 0.264172 for distilled spirits.

History.—Added by Stats. 1977, Ch. 921, operative January 1, 1978.

32453. Examining books. The board may make such examinations of the books and records of any person selling, manufacturing, warehousing, or transporting alcoholic beverages as it may deem necessary in carrying out the provisions of this part.

32454. Administrative representatives. The board may employ accountants, auditors, investigators and other expert and clerical assistance necessary to enforce its powers and perform its duties under this part.

32455. Disclosure of information. It is unlawful for the board or any person having an administrative position under this part to make known in any manner whatever any information set forth or disclosed in any report from any winegrower pursuant to this part regarding the names of the purchasers and the amounts of individual sales of wines which the winegrower has exported from this state, or to permit the portion of any report or copy thereof which contains such information to be seen or examined by any person. This section does not prohibit the publication by the board of any winegrower's total receipts from the export of wines from this state.

Nothing in this section shall prevent the board from exchanging with officials of other states information concerning the interstate shipments of wine.

History.—Added by Stats. 1965, p. 1172, in effect September 17, 1965.

32455.5. Information confidential; tax preparer. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 6 of this part, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

32456. Certificate of notice. A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice

provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

History.—Added by Stats. 1974, Ch. 610, effective January 1, 1975.

32457. Vendor's Report of Beer Shipments. Notwithstanding Section 15619 of the Government Code, all information contained in the Vendor's Report of Beer Shipments into California may be made public.

History.—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997.

Article 2. The California Taxpayers' Bill of Rights *

§ 32460.	Administration.
§ 32461.	Taxpayers' Rights Advocate.
§ 32462.	Education and information program.
§ 32463.	Annual hearing with taxpayers.
§ 32464.	Preparation of statements by board.
§ 32465.	Limit on revenue collected or assessed.
§ 32466.	Evaluation of employee's contact with taxpayers.
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§ 32473.	Exemptions from levy.
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§ 32476.	Disregard by board employee or officer.

32460. Administration. The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

32461. Taxpayers' Rights Advocate. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as a result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

32462. Education and information program. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

* Article 2 was added by Stats. 1992, Ch. 438, in effect January 1, 1993.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “and compliance” after “program for audit” in paragraph (4) of subdivision (b).

32463. Annual hearing with taxpayers. The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Alcoholic Beverage Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

32464. Preparation of statements by board. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

32465. Limit on revenue collected or assessed. (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

32466. Evaluation of employee’s contact with taxpayers. The board shall develop and implement a program that will evaluate an individual

employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

32467. Plan to timely resolve claims and petitions. The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

32468. Procedures relating to protest hearings. Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

(b) The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

32469. Reimbursement to taxpayer. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “board” for “State Board of Control” after “expenses with the” in paragraph (1) of, substituted “decides” for “makes a recommendation to the State Board of Control” after “The board” in paragraph (3) of, and deleted paragraph (4) which read: “The State Board of Control concurs with the recommendation and orders the board to provide reimbursement of fees and expenses to the taxpayer.” from, subdivision (a); and added subdivision (d). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “within one year . . . board becomes final” after “with the board” in paragraph (1) of, and substituted “in an amount . . . its sole discretion” for “which shall be determined by the board” after “to the hearing” in paragraph (3) of subdivision (a), substituted “board staff has . . . substantially justified” for “taxpayer has established that the position of the staff was not substantially justified” after “consider whether the” in subdivision (b), and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), substituted “the notice of determination, jeopardy determination, or a claim for refund” for “filing petitions for redetermination and claims for refund” after “incurred after the date” in subdivision (c) paragraph(1).

32470. Investigations for nontax administration purposes. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include alcoholic beverage tax violations.

(e) For the purposes of this section:

(1) “Investigation” means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) “Surveillance” means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

32471. Settlement of disputed tax liabilities. [Repealed by Stats. 1995, Ch. 497 in effect January 1, 1996.]

32471. Settlement authority. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the

recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

- (1) The name or names of the taxpayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same

manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 32455.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

History.—Added by Stats. 1995, Ch. 497, in effect January 1, 1996. Stats. 2003, Ch. 605 (SB 1060), effective January 1, 2004, added “,for at least one year,” after “there shall be placed on file” in the first sentence of subdivision (c). Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, substituted “Except as provided in paragraph (3) and subject” for “Subject” before “to paragraph (2)” in paragraph (1) of, added “,itself,” after “submitted to the board” in the first and third sentences of paragraph (2) of, and added paragraph (3) to subdivision (b); added “, or penalties, or total tax and penalties” after “a reduction of tax” in the first paragraph of and substituted “For any settlement approved by the board, itself, the” for “The” before “Attorney General’s conclusion” in the first sentence of paragraph (5) of subdivision (c); added “,itself,” after “disapproved by the board” in the second sentence of subdivision (e)(1); and added “considered or” after “any settlement” in the second sentence of subdivision (g).

Text of section in effect January 1, 2007 through December 31, 2012

32471.5. Offers in compromise. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 14 (commencing with Section 32001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated by a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

▲ (2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a “qualified final tax liability” means that part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the taxpayer collected reimbursement or tax reimbursement from the purchaser or other person and which was determined against the taxpayer under Article 2 (commencing with Section 32271), Article 3 (commencing with Section 32291), or Article 4 (commencing with Section 32301) of Chapter 6.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer’s liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer’s liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that such installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required tax returns and reports for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file tax returns and reports, whichever period is earlier.

(h) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(i) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(j) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(k) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

▲(l) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

▲(m) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

▲(n) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state. The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 32455. No list shall be prepared and no releases distributed by the board in connection with these statements.

▲(o) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

▲(p) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon

conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(q) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(r) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007. Stats. 2008, Ch. 222 (AB 2047), in effect January 1, 2009, redesignated former subdivision (c) to be subdivision (c)(1); added paragraphs (2) and (3) to subdivision (c); added subdivisions (d)-(g); redesignated former subdivisions (d)-(m) to be (h)-(q); and added subdivision (r).

Text of section operative January 1, 2013

32471.5. Offers in compromise. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 14 (commencing with Section 32001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 32455. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

History.—Added by Stats. 2008, Ch. 222 (AB 2047), in effect January 1, 2009, operative January 1, 2013.

32472. Release of levy. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars (\$1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” before “of Title 9” and added “Part 2 of” before “the Code” in subdivision (b). Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “that the” for “of any of the following: (1) The” after “in the event” in subdivision (a); substituted subdivision (b) for former paragraph (a)(2) which read: “The Taxpayers' Rights Advocate orders the release of the levy or notice to withhold upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.”; and relettered former subdivisions (b) and (c) as (c) and (d), respectively.

32472.1. Return of property. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 32389 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 32474.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

32473. Exemptions from levy. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” before “of Title 9”, and added “Part 2 of” before “the Code”.

32474. Claim for reimbursement of bank charges by taxpayer.

(a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to

withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

History.— Stats. 2001, Ch. 543 (SB 1185), in effect January 1, 2002, added “and any other reasonable third-party check charge fees” after “reimbursement of bank charges” in the first sentence of, added “and third party” after “Bank” and added “or third party’s” after “financial institution’s” in the second sentence of, and added “or third party” after “financial institution” in the third sentence of, subdivision (a).

32475. Preliminary notice to taxpayers prior to lien. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 5 (commencing with Section 32311) of Chapter 6.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added subdivision (e). Stats. 2006, Ch. 538 (SB 1852), in effect January 1, 2007, added “as” after “recording the lien as soon” in the first sentence of subdivision (c).

32476. Disregard by board employee or officer. (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party’s case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer’s position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

Uncodified Sections

§ 1. Multiagency task force.

1. Multiagency task force. (a) The multiagency task force established pursuant to Executive Order D-51-86 (hereinafter referred to as “task force”) shall include among its goals and objectives the following:

(1) To deter tax evasion by maximizing recoveries from blatant tax evaders and violators of cash-pay reporting laws, utilizing all penalties which are available to the taxing and enforcement agencies under existing law.

(2) To reduce enforcement costs by eliminating duplicative audits and investigations.

(3) To generate greater voluntary taxpayer compliance and to deter tax and cash-pay violations by publicizing the efforts of the task force.

(4) To provide opportunities for auditors and investigators from tax and enforcement agencies to become familiar with other agencies' laws and enforcement procedures.

(5) To concentrate its efforts in investigating and prosecuting violations of cash-pay and tax laws by employers with five or more employees and by individuals who are habitual or willfull violators of those laws.

(b) In addition to the responsibilities cited in Executive Order D-51-86, the task force shall be empowered to do all of the following:

(1) Identify areas of blatant violations and noncompliance with tax and cash-pay laws.

(2) Solicit referrals from the tax and enforcement agencies represented on the task force committee of instances of blatant violations and noncompliance with tax and cash-pay laws.

(3) Conduct audits, investigations, and referrals for prosecution of violations referred by other agencies and in the identified areas of violations and noncompliance, using all enforcement powers available in existing laws and regulations.

(4) Establish an advertised telephone "hotline" for referrals from the public.

(5) Publicize the activities of the task force.

(6) Keep the audit and investigative staff of the tax and enforcement agencies represented on the task force committee fully informed of the activities of the task force.

(7) Develop procedures for improved information sharing among the agencies represented on the task force committee, consistent with restrictions on disclosure of confidential tax information in existing law, for the purpose of improving enforcement.

(8) Based on the activities of the task force, evaluate the need for any law changes to do any of the following:

(A) Eliminate barriers to interagency information sharing.

(B) Improve agencies' ability to audit, investigate, and prosecute tax and cash-pay violations.

(C) Deter violations and improve voluntary compliance.

(D) Eliminate duplication and improve cooperation among the participating agencies.

(c) The task force shall report to the Governor, the Senate and Assembly Revenue and Taxation Committees, and the Commission on California State Government Organization and Economy every six months during the period

it is in existence, beginning on March 1, 1987, regarding the activities of the task force. The reports shall include, but not be limited to, all of the following:

(1) The number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited or investigated, and referred for prosecution.

(2) Actions taken by the task force to publicize its activities.

(3) Efforts made by the task force to establish an advertised telephone "hotline" for referrals from the public.

(4) Procedures developed for improved information sharing among the agencies represented on the task force.

(5) Steps taken by the task force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.

(6) Recommendations for any law changes needed to accomplish the goals described in paragraph (8) of subdivision (b).

History.—Added by Sec. 40, Stats. 1986, Ch. 1361, effective January 1, 1987.

CHAPTER 10. DISPOSITION OF PROCEEDS

- § 32501. Alcohol Beverage Control Fund.
- § 32502. Disposition of fund.

32501. Alcohol Beverage Control Fund. All taxes, interest, and penalties imposed and all amounts of tax required to be paid to the State under this part shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the State Treasurer to be deposited in the State Treasury to the credit of the Alcohol Beverage Control Fund.

32502. Disposition of fund. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part or be transferred to the General Fund of the State.

CHAPTER 11. VIOLATIONS

- § 32551. False returns; failure to keep records.
- § 32552. Tax evasion.
- § 32553. Diversion of industrial spirits or wine to beverage use.
- § 32554. Punishment for misdemeanor.
- § 32555. Punishment for felony.
- § 32556. Limitations.
- § 32557. Additional misdemeanor provisions.

32551. False returns; failure to keep records. Any person who knowingly or wilfully files a false tax return with the board, and any person who refuses to permit the board or any of its representatives to make any inspection or examination for which provision is made in this part, or who fails to keep books of account as prescribed by the board, or who fails to preserve such books for the inspection of the board for such time as the board deems necessary, or who alters, cancels, or obliterates entries in such books of account for the purpose of falsifying the records of sales of alcoholic beverages made under this part, is guilty of a misdemeanor and shall be

punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

32552. Tax evasion. Any person who wilfully evades or attempts in any manner to evade or defeat the payment of the excise tax imposed by this part is guilty of a felony.

32553. Diversion of industrial spirits or wine to beverage use. Any person who diverts or conspires with others to divert for beverage use any alcohol or other distilled spirits or wine sold tax free for use in the trades, professions, or industries is guilty of a felony.

32554. Punishment for misdemeanor. Every person convicted for a violation of any of the provisions of this part for which another penalty or punishment is not specifically provided for in this part is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

History.—Stats. 1983, Ch. 1092, in effect September 27, 1983, operative January 1, 1984, substitute “one thousand dollars (\$1,000)” for “five hundred dollars (\$500)” after “not more than.”

32555. Punishment for felony. Every person convicted of a felony for a violation of any of the provisions of this part for which another punishment is not specifically provided for in this part shall be punished by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment in the state prison, or by both such fine and imprisonment.

History.—Stats. 1983, Ch. 1092, in effect September 27, 1983, operative January 1, 1984, substituted “ten thousand dollars (\$10,000)” for “five thousand dollars (\$5,000)” after “not more than” and “prison” for “penitentiary for not less than one year nor more than five years” after “state.”

32556. Limitations. Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of the offense, or within two years after the violation is discovered, whichever is later.

History.—Added by Stats. 1957, p. 2025, in effect September 11, 1957. Stats. 1986, Ch. 1361, effective January 1, 1987, added “, or within two years after the violation is discovered, whichever is later.”

Note.—Sec. 41, Stats. 1986, Ch. 1361, required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

32557. Additional misdemeanor provisions. Any person who knowingly possesses, keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any container or containers of alcoholic beverage with a tax value greater than five hundred dollars (\$500) where the taxes imposed under this part have not been paid is guilty of a misdemeanor.

History.—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997.

**BUSINESS AND PROFESSIONS CODE PROVISIONS
RELATING TO THE ALCOHOLIC BEVERAGE TAX LAW ***

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS †

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* See Section 32002 of Revenue and Taxation Code in this volume.

† The provisions of this chapter, except as otherwise noted, were added by Stats. 1953, p. 954, in effect September 9, 1953.

§ 23044.	“License.”
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§ 23046.	“Air common carrier.”
§ 23047.	“Scheduled flight.”

23000. **Title.** This division shall be known and may be cited as the “Alcoholic Beverage Control Act.”▲

23001. **Purposes of act.** This division is an exercise of the police powers of the State for the protection of the safety, welfare, health, peace, and morals of the people of the State, to eliminate the evils of unlicensed and unlawful manufacture, selling, and disposing of alcoholic beverages, and to promote temperance in the use and consumption of alcoholic beverages. It is hereby declared that the subject matter of this division involves in the highest degree the economic, social, and moral well-being and the safety of the State and of all its people. All provisions of this division shall be literally construed for the accomplishment of these purposes.

23001.5. **Severability clause.** If any provision of this division or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this division that can be given effect without the invalid portion or application, and to this end the provisions of this division are severable. It is the intent of the Legislature that this division would have been adopted regardless if such invalid provision had not been included or any invalid application had not been made.

23002. **Construction.** Unless the context otherwise requires, the definitions and general provisions set forth in this chapter govern the construction of this division.

23003. **“Alcohol.”** “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

23004. **“Alcoholic beverage.”** “Alcoholic beverage” includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of 1 percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

Grain alcohol.—Grain alcohol imported in tank cars and unfit for beverage purposes until redistilled is not an alcoholic beverage within the meaning of this section. *American Distilling Co. v. State Board of Equalization*, 144 Cal.App.2d 457.

23005. **“Distilled spirits.”** “Distilled spirits” means an alcoholic beverage obtained by distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

Construction.—The definition of distilled spirits in this section controls the construction of that term as it is used throughout this division. *American Distilling Co. v. State Board of Equalization*, (1956) 144 Cal.App.2d 457.

23006. **“Beer.”** “Beer” means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other

similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake, known as Japanese rice wine.

Intoxicating nature.—Whenever merchandise is sold as “beer” it could not mean anything but an intoxicating beverage. *Molina v. Munro*, (1956) 145 Cal.App.2d 601.

23007. **“Wine.”** “Wine” means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 percent added flavoring, coloring, and blending material and which contains not more than 24 percent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine.

Nothing contained in this section affects or limits the power, authority, or duty of the State Department of Health Services in the enforcement of the laws directed toward preventing the manufacture, production, sale, or transportation of adulterated, misbranded, or mislabeled alcoholic beverages, and the definition of “wine” contained in this section is limited strictly to the purposes of this division and does not extend to, or repeal by implication, any law preventing the production, manufacture, sale, or transportation of adulterated, misbranded, or mislabeled alcoholic beverages.

History.—Stats. 1971, p. 3224, operative July 1, 1972, added “State” preceding “Department of Health” in second paragraph. Stats. 1977, Ch. 1252, added “Public” preceding “Health” in second paragraph. Stats. 1978, Ch. 429, operative July 1, 1978, in the second paragraph deleted “Public” following “Department of” and added “Services” following “Health”.

Wine definition.—Mixtures containing wine, alcohol, flavoring and water, with the added alcohol being three times as much as the wine are not wines within the meaning of the Alcoholic Beverage Control Act. *Tux Ginger Ale Co., Ltd. v. Davis*, (1936) 12 Cal.App.2d 73.

23008. **“Person.”** “Person” includes any individual firm copartnership, joint adventure, association, corporation, estate, trust, business trust receiver syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number.

Construction.—A license held by a corporation may be revoked after transfer of all the stock of the corporation for violations occurring prior to such transfer. When a license is issued to a corporation it retains the same and is responsible for the license until it is suspended or revoked. *Maxwell Cafe, Inc. v. Dept. of Alcoholic Beverage Control*, (1956) 142 Cal.App.2d 73.

23009. **“Licensee.”** “Licensee” means any person holding a license, a permit, a certification, or any other authorization issued by the department.

History.—Stats. 1955, p. 897, in effect September 7, 1955, substituted “department” for “board.” Stats. 2004, Ch. 437 (AB 3085), in effect September 9, 2004, added “, a permit, a certification, or any other authorization” after “person holding a license”.

23010. **“Taxpayer.”** “Taxpayer” means a person liable for the payment of a tax pursuant to Part 14 of Division 2 of the Revenue and Taxation Code.

History.—Stats. 1955, p. 3409, in effect September 7, 1955, added reference to Revenue and Taxation Code.

23011. **“Salesman.”** “Salesman” means any individual who solicits or receives an order for alcoholic beverages from any licensee.

23012. **“Beer manufacturer.”** “Beer manufacturer” means any person engaged in the manufacture of beer.

23013. **“Winegrower.”** “Winegrower” means any person who has facilities and equipment for the conversion of grapes, berries or other fruit into wine and is engaged in the production of wine.

History.—Stats. 1965, p. 1811, in effect September 17, 1965, added “who has facilities and equipment for the conversion of grapes, berries or other fruit into wine and is” in the first sentence. Stats. 2008, Ch. 28 (SB 607), in effect June 6, 2008, added the comma after “berries”; and deleted “, except that any person who produces not to exceed 200 gallons of wine per year for his own consumption shall not, because of such production, be considered a winegrower within the meaning of this division” at the end.

23013.5. **“Wine blender.”** A “wine blender” is a person authorized to operate a bonded wine cellar pursuant to a permit issued for that purpose under the Internal Revenue Laws of the United States but who does not have facilities or equipment for the conversion of grapes, berries or other fruit into wine and does not engage in the production of wine in commercial quantities, provided that any person who produces or blends not to exceed 200 gallons of wine per year shall not, because of such production or blending, be considered a wine blender within the meaning of this division.

History.—Added by Stats. 1965, p. 1811, in effect September 17, 1965.

23014. **“Brandy manufacturer.”** “Brandy manufacturer” means any person engaged in the manufacture of brandy only and not in the manufacture of any other distilled spirits.

23015. **“Distilled spirits manufacturer.”** “Distilled spirits manufacturer” means any person who produces distilled spirits from naturally fermented materials or in any other manner.

Construction.—This section recognizes that distilled spirits may be manufactured other than by the distillation of fermented agricultural products, such as by redistillation. American Distilling Co. v. State Board of Equalization, (1956) 144 Cal.App.2d 457.

23016. **“Rectifier.”** “Rectifier” means every person who colors, flavors, or otherwise processes distilled spirits by distillation, blending, percolating, or other processes.

Redistilling.—Manufacture of gin, vodka and whiskey by redistilling grain alcohol unfit for beverage use before such redistillation is not rectification. American Distilling Co. v. State Board of Equalization, (1956) 144 Cal.App.2d 457.

23017. **“Importer.”** “Importer” means:

(a) Any consignee of alcoholic beverages brought into the State from without this State, when the alcoholic beverages are for delivery or use within this State.

(b) Any person, except a public warehouse licensed under this division, to whom delivery is first made in this State of alcoholic beverages brought into this State from without this State for delivery or use within this State.

(c) Any person, licensed as an importer, selling alcoholic beverages to nonlicensees within an area over which the United States Government exercises jurisdiction, when delivery of the alcoholic beverages is made to the nonlicensees by a common carrier transporting the alcoholic beverages from a point outside this State.

(d) Any person bringing alcoholic beverages into this State from without this State which are not consigned to any person and which are for delivery or use within this State.

A person licensed as a customs broker who is acting as an agent for a licensed importer or for another person whose place of business is without the State shall not be deemed to be the importer of alcoholic beverages consigned in United States internal revenue bond or in United States customs bond to a licensed customs broker.

23018. **“Exporter.”** “Exporter” means any person who sells, delivers, or consigns alcoholic beverages located within this State for delivery, use, or sale without the State.

23019. **“Customs broker.”** “Customs broker” means every person who is authorized to act as agent or broker for a person licensed as an importer or for a person whose place of business is without the State, in regard to the importing of alcoholic beverages into the State in United States internal revenue bond or in United States customs bond.

23020. **“Wine broker.”** “Wine broker” means every person, other than a salesman who is regularly employed by a licensee, who engages as an agent in the sale or purchase of wine for or on behalf of another or others for a fee or commission.

23021. **“Wholesaler.”** “Wholesaler” means every person other than a manufacturer, winegrower, or rectifier who is engaged in business as a jobber or wholesale merchant, dealing in alcoholic beverages, in an area within the United States other than a territory or possession of the United States, or within a foreign country having common boundaries with any state of the United States.

History.—Stats. 1973, Ch. 453, effective January 1, 1974, excluded wholesalers in a territory or possession of the United States. Stats. 1975, Ch. 597, in effect January 1, 1976, substituted “the United States” for “or without the state” and added the phrase beginning “or within a foreign country.”

23022. **“Industrial alcohol dealer.”** “Industrial alcohol dealer” means a person who sells alcohol or distilled spirits in packages of more than one gallon for use in the trades, professions, or industries, but not for beverage use.

23023. **“Retailer.”** “Retailer” means any on- or off-sale licensee.

23024. **“Retailer’s on-sale license.”** “Retailer’s on-sale license” means on-sale beer licenses, on-sale beer and wine licenses, on-sale general licenses, and on-sale general licenses for seasonal businesses.

23025. **“Sell” or “sale.”** “Sell” or “sale” and “to sell” includes any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages and

soliciting or receiving an order for such beverages, but does not include the return of alcoholic beverages by a licensee to the licensee from whom such beverages were purchased.

“Sale” includes giving samples.—Where distilled spirits are given away as samples, apparently for the purpose of encouraging the sale of the product, such distributions are not in the true sense gratuitous and hence they are taxable. *Tonkin Distributing Co., Inc. v. Collins*, 50 Cal.App.2d 790; *Sauers Wholesale Co. v. Collins*, (1942) 50 Cal.App.2d 786; *Rathjen Bros. Inc. v. Collins*, (1942) 50 Cal.App.2d 774.

“Sale” includes delivery.—There was a delivery of alcoholic beverages in this State and, hence, a sale within the definition when distilled spirits were shipped from a point outside of California to the United States Army on a military reservation in California under a bill of lading designating the shipper as consignor. *National Distillers Products Corp. v. State Board of Equalization*, (1947) 83 Cal.App.2d 35.

Delivery not deemed a sale.—See Section 23661.2 of the B. & P. Code under which certain deliveries of wine shipments are not deemed to constitute sales in this State.

23026. **“Retail sale.”** “Retail sale” or “sale at retail” means the sale by an on- or off-sale licensee for consumption and not for resale.

23027. **“Wholesale sale.”** “Wholesale sale” or “sale at wholesale” means a sale to any licensee for purposes of resale.

23028. **“Package.”** “Package” means any container or receptacle used for holding alcoholic beverages which is corked or sealed with a stub, stopper, cap, or in any other manner.

23029. **“Case.”** “Case” or “original case” means a standard box or carton as packed by the manufacturer or wine grower in which packages of alcoholic beverages are shipped or transferred.

23030. **“To bottle” or “to package.”** “To bottle” or “to package” means to bottle, barrel, or otherwise place alcoholic beverages in a container.

23031. **“Gallon” or “wine gallon.”** “Gallon” or “wine gallon” means that liquid measure containing 231 cubic inches.

23032. **“Proof spirits.”** “Proof spirits” means that alcoholic liquor which contains one-half of its volume of pure ethyl alcohol of a specific gravity of 0.7939 at 60 degrees Fahrenheit, referred to water at 60 degrees Fahrenheit as unity.

23033. **“Proof gallon.”** “Proof gallon” means a gallon of proof spirits or an equivalent amount of alcohol.

23034. **“Still.”** “Still” means any apparatus capable of being used for separating alcohol, or alcoholic vapors or solutions from alcohol or alcoholic solutions or mixtures, but does not include stills or apparatus used for laboratory purposes or solely in the production of distilled water or substances other than alcoholic beverages.

History.—Stats. 1959, p. 2510, in effect September 18, 1959, reworded this section.

23035. **“Private warehouse.”** “Private warehouse” means any place maintained by a licensee, other than his licensed premises, for the storage but not for the sale of alcohol or alcoholic beverages owned by the licensee.

23036. **“Public warehouse.”** “Public warehouse” means any place licensed for the storage of, but not the sale of, alcohol or alcoholic beverages

for the account of other licensees and includes United States custom bonded warehouses and United States internal revenue bonded warehouses when the bonded warehouses are used for storage of alcoholic beverages for the account of another licensee.

23037. **“Club.”** “Club” means a corporation or association which is the owner, lessee, or occupant of an establishment operated solely for objects of a social or athletic nature but not for pecuniary gain, having a bona fide membership list, and the majority of the members of which pay dues at least once in every year, and the property as well as the advantages of which belong to the members, and which sells alcoholic beverages only to its members and its bona fide guests. A guest is defined as a person who is actually a houseguest, or a person whose presence as a guest is in response to a specific invitation for the special occasion.

History.—Stats. 1957, p. 1829, in effect September 11, 1957, added “and which sells alcoholic beverages only to its members and its bona fide guests” at end of first sentence and added the last sentence.

23038. **“Bona fide public eating place”; “meals”; “guests.”** “Bona fide public eating place” means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. “Meals” means the usual assortment of foods commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement. “Guests” shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.

History.—Stats. 1955, p. 3284, in effect September 7, 1955, operative January 1, 1957, upon adoption of an amendment to Section 22, Article XX, California Constitution, substituted present provisions for former provisions defining hotel, restaurant, cafe, cafeteria and other public eating place.

Concession agreement.—Except as permitted by last sentence of Section 23787, a licensee under a bona fide public eating place on-sale general license may not lease or make a concession agreement under which he would in effect sublet the restaurant operations on his premises. 29 Ops. Atty. Gen. 95.

Ownership of license as evidence of ownership of connected restaurant.—The appearance of a person’s name on a liquor license of a type which required him to serve food is evidence that he is the owner and operator of a restaurant adjoining the licensed premises. *Farmer Bros. Co. v. Kiernan*, (1957) Cal.App.2d 867.

23038.1. **“Bona fide public eating place” continued.** Notwithstanding the provisions of Section 23038, “bona fide public eating place” also means a convention center, exhibit hall, or auditorium, which shall hereinafter be referred to as “premises,” owned by or leased to the State of California, any incorporated city, county, city and county, or public corporation of the State of California which is regularly and in a bona fide manner used and kept open for the attendance of groups of guests, and in

connection with such use serves meals to such groups of guests for compensation, and which has suitable kitchen facilities in connection therewith, such kitchen containing conveniences for preparation of ordinary meals and maintained in a sanitary condition with proper refrigeration for the keeping of food on the premises in compliance with all regulations of the local department of health.

“Meals,” as used in this section, means foods commonly ordered at a lunch or dinner; provided, however, that the service of food such as sandwiches or salads only shall not be deemed compliance with this requirement.

“Groups of guests,” as used in this section, means persons who come to the premises owned or leased as provided herein, to make use of such premises for the purpose or purposes for which it was designed, and in connection with such use may, as a group, order in advance and obtain or be served a meal therein.

“Convention center” as used in this section, means a building or group of buildings in close physical proximity consisting of, but not necessarily limited to, a convention hall, exhibit hall, auditorium, or theater, or any combination thereof, and used for the purpose, among other things, of providing facilities for conventions, theatrical productions, shows, sporting centers, exhibits, displays, conferences or meetings.

Nothing in this section shall be construed to require that meals be served every day that use is made of the premises or any part thereof. However, meals shall actually be available to groups of guests in good faith upon adequate notice and request to the operators of such premises on any day of any year that such premises are used by such groups of guests, and shall be served to groups of guests as heretofore provided on at least 25 percent of the total days each year that the premises are used by said groups of guests.

Nothing in this section shall be construed to require that any food be sold or purchased with any alcoholic beverage.

History.—Added by Stats. 1968, p. 1640, in effect November 13, 1968.

23038.2. **“Bona fide eating place” continued.** Notwithstanding the provisions of Section 23038, for purposes of issuing an on-sale beer and wine license only, “bona fide public eating place” also means a ball park, stadium, or coliseum featuring professional sporting events which maintains suitable kitchen facilities for the preparation of food which is offered for sale to persons attending such professional sporting events.

The Department of Alcoholic Beverage Control may prescribe specific types and sizes of beer and wine containers which may be sold pursuant to the provisions of this section.

History.—Added by Stats. 1976, Ch. 561, in effect January 1, 1977. Stats. 1978, Ch. 270, effective January 1, 1979, deleted “which contains at least 40,000 seats and” following “sporting events” in the first paragraph.

23039. **“Public premises.”** [Repealed, as added by Stats. 1979, Ch. 487, Sec. 2, by Stats. 1984, Ch. 399, effective July 11, 1984, repeal inoperative.]

23039. **“Public premises.”** (a) “Public premises” means:

(1) Premises licensed with any type of license other than an on-sale beer license, and maintained and operated for the selling or serving of alcoholic beverages to the public for consumption on the premises, and in which food shall not be sold or served to the public as in a bona fide public eating place, but upon which premises food products may be sold or served incidentally to the sale or service of alcoholic beverages, in accordance with rules prescribed by the department.

(2) Premises licensed with an on-sale beer license, in which food shall not be sold or served to the public as in a bona fide public eating place, and in which sandwiches, salads, desserts, and similar short orders shall not be sold and served, in accordance with rules prescribed by the department.

(b) “Public premises” does not include railroad dining or club cars, passenger ships, airplanes, or bona fide clubs after the clubs have been lawfully operated for not less than one year; nor does it include historic units of the state park system, premises being operated under a temporary on-sale beer license other than permitted pursuant to Section 24045.5, or on-sale beer licensed stadia, auditoria, fairgrounds, or racetracks; nor does it include nonprofit theater companies licensed pursuant to Section 24045.7; nor does it include winegrowers’ premises.

History.—Stats. 1955, p. 3285, in effect September 7, 1955, operative January 1, 1957, upon adoption of an amendment to Section 22, Article XX, California Constitution, substituted present provisions for former provisions defining public bar, public saloon, and public barroom. Stats. 1967, p. 3104, in effect November 8, 1967, divided section into subdivisions, added “licensed with any type of license other than an on-sale beer license and” in first two lines of (a) (1), added (a)(2), and revised (b). Stats. 1968, p. 2009, in effect November 13, 1968, revised (b), adding “historic units of the state park system” and “or on-sale beer licensed”. Stats. 1984, Ch. 399, as amended by Stats. 1979, Ch. 487, Sec. 1, effective July 11, 1984, substituted “the” for “such” before “clubs” in (b), added “nor does it . . . Section 24045.7” at end of (b). Stats. 2008, Ch. 508 (AB 3071), in effect January 1, 2009, added “; nor does it include winegrowers’ premises” after “licensed pursuant to Section 24045.7” to subdivision (b).

23039.1. **Admission of minors to cabaret theater.** Notwithstanding any other provision of law, any on-sale beer and wine public premises licensee who has been licensed at premises operated as a cabaret theater for at least 10 years and which has a seating capacity for at least 375 patrons may admit persons under the age of 21 years to theater performances provided that alcoholic beverages are not sold, served, or consumed on the premises during those performances.

History.—Added by Stats 1987, Ch. 869, in effect September 21, 1987. Stats. 2008, Ch. 18 (AB 23), in effect June 2, 2008, substituted “theater performances” for “matinee theater performances on Sunday” after “21 years to”.

23040. **“Within this State.”** “Within this State” means all territory within the boundaries of this State.

23041. **“Without the State.”** “Without the State” means all territory without the boundaries of this State.

23042. **“Board.”** “Board” means the State Board of Equalization, in the exercise of the powers and duties with respect to excise taxes reserved to it by Section 22 of Article XX of the Constitution.

History.—Stats. 1955, p. 897, in effect September 7, 1955, added the clause following “Equalization.”

23043. **“Department”;** **“director.”** “Department” means the Department of Alcoholic Beverage Control, and “director” means the Director of Alcoholic Beverage Control.

History.—Stats. 1955, p. 898, in effect September 7, 1955, substituted the definition of “Department” in place of the former definition of “State Liquor Administrator.”

23044. **“License.”** “License” means a license authorized to be issued by the department pursuant to this division.

History.—Stats. 1955, p. 898, in effect September 7, 1955, substituted “department” for “board.”

23045. **“Appeals board.”** “Appeals board” means the Alcoholic Beverage Control Appeals Board.

History.—Added by Stats. 1955, p. 898, in effect September 7, 1955.

23046. **“Air common carrier.”** “Air common carrier” means a person engaged in regularly scheduled air transportation between fixed termini under a certificate of public convenience and necessity issued by the Civil Aeronautics Board, or its successor, or the Public Utilities Commission, or its successor, and “airplane” or “common carrier airplane” means an airplane operated in air transportation by an air common carrier.

History.—Added by Stats. 1955, p. 1840, in effect September 7, 1955. Stats. 1957, p. 594, in effect September 11, 1957, renumbered this section which was formerly numbered 23045. Stats. 1968, p. 1296, in effect November 13, 1968, added “or its successor, or the Public Utilities Commission, or its successor”.

23047. **“Scheduled flight.”** “Scheduled flight” means a regularly scheduled and advertised flight of an air common carrier but does not mean each daily operation of airplanes upon such flight.

History.—Added by Stats. 1955, p. 1840, in effect September 7, 1955. Stats. 1957, p. 595, in effect September 11, 1957, renumbered this section which was formerly numbered 23046.

CHAPTER 4. IMPORTS *

- § 23660. Right of postal authorities to refuse delivery of imported beverages.
- § 23661. Who may import.
- § 23661.1. Importation of alcoholic beverages into State by adult passenger on board chartered flight.
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- § 23670. Violation of provisions a misdemeanor.
- § 23671. Importation of beer for sale in State.
- § 23672. Designation of licensed importer as authorized importer of brand.
- § 23673. Distilled spirits; price to wholesaler or rectifier.

* The provisions of Chapter 4 of the Business and Professions Code were added to the Business Taxes Law Guide in 2006. Any changes to these provisions prior to 2006 will not be reflected in the history notes.

23660. Right of postal authorities to refuse delivery of imported beverages. Postal authorities may refuse delivery of any shipment of alcoholic beverages originating outside this State. Postal authorities may turn alcoholic beverages over to the department. The alcoholic beverage when received shall be forfeited to the State.

23661. Who may import. Except as otherwise provided in this section, alcoholic beverages may be brought into this state from without this state for delivery or use within the state only by common carriers and only when the alcoholic beverages are consigned to a licensed importer, and only when consigned to the premises of the licensed importer or to a licensed importer or customs broker at the premises of a public warehouse licensed under this division.

The provisions of this chapter are not applicable in the case of alcoholic beverages which are sold and delivered by a licensee in this state to another licensee in this state, and which in the course of delivery are taken without this state through another state without any storage thereof in such other state.

The provisions of this section are not applicable in the case of a reasonable amount of alcoholic beverages brought into this state by an adult from without the United States for personal or household use; except that a California resident returning to the United States by a vehicle which is not a common carrier, or any adult entering the United States as a pedestrian, shall be restricted to the amount of alcoholic beverages which are exempt from the payment of duty in accordance with existing provisions of federal law. Such alcoholic beverages shall be exempt from state licensing restrictions.

The provisions of this section are not applicable in the case of alcoholic beverages shipped into this state from without the United States by an adult member of the armed forces of the United States, serving outside the confines of the United States, for his personal or household use within the state in such quantity of alcoholic beverages as is exempt from the payment of duty under existing provisions of the Federal Tariff Act or regulations. Such alcoholic beverages may be brought into this state only by common carrier and consigned to the premises of a licensed importer or customs broker, or to a licensed importer or customs broker at the premises of a public warehouse licensed under this division. Notwithstanding any other provisions of this division, the holder of an importer's license, a customs broker's license, or a public warehouse license, may make delivery of such alcoholic beverages as may be brought into this state under the provisions of this paragraph directly to the owner thereof upon satisfactory proof of identity. Such delivery shall not be deemed to constitute a sale in this state.

A manufacturer of distilled spirits may transport such distilled spirits into this state in motor vehicles owned by or leased to the manufacturer, and operated by employees of the manufacturer, if:

(a) Such distilled spirits are transported into this state from a place of manufacture within the United States; and

(b) The manufacturer holds a California distilled spirits manufacturer's license; and

(c) Delivery is made to the licensed premises of such distilled spirits manufacturer.

23661.1. Importation of alcoholic beverages into State by adult passenger on board chartered flight. Notwithstanding any other provision of law, an adult passenger on board a chartered airplane on a flight which commences and terminates in the continental United States and which does not land outside the continental United States, may bring not to exceed one quart of alcoholic beverages into this State for household or personal use. Such alcoholic beverages shall be exempt from state licensing restrictions. No person shall bring in more than one quart of alcoholic beverages during any calendar year pursuant to the authority granted in this section.

23661.2. Permit to receive shipment of wine from another state. Notwithstanding any other law, an individual or retail licensee in a state that affords California retail licensees or individuals an equal reciprocal shipping privilege, may ship, for personal use and not for resale, no more than two cases of wine (no more than nine liters each case) per month to any adult resident in this state. Delivery of a shipment pursuant to this subdivision shall not be deemed to constitute a sale in this state.

The shipping container of any wine sent into or out of this state under this section shall be clearly labeled to indicate that the container cannot be delivered to a minor or an intoxicated person.

History.—Stats. 2005, Ch. 157 (SB 118), in effect January 1, 2006, deleted the former subdivision (a), deleted the former subdivision letter (b), added "retail" after "an individual or" and "that affords California", respectively, in first paragraph, substituted "container" for "package" after "to indicate that the", and deleted "to" after "to a minor or" in the second paragraph.

23661.3. Wine direct shipper permit. (a) Notwithstanding any law, rule, or regulation to the contrary, any person currently licensed in this state or any other state as a winegrower who obtains a wine direct shipper permit pursuant to this section may sell and ship wine directly to a resident of California, who is at least 21 years of age, for the resident's personal use and not for resale.

Before sending any shipment to a resident of California, the wine direct shipper permitholder must:

- (1) File an application with the department.
- (2) Pay a ten-dollar (\$10) annual registration fee if the winegrower is not currently licensed by the department.
- (3) Provide the department its California alcoholic beverage license number or a true copy of its current alcoholic beverage license issued by another state.
- (4) Obtain from the department a wine direct shipper permit.
- (5) Obtain a seller's permit or register with the State Board of Equalization pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(b) A wine direct shipper permit authorizes the permitholder to do all of the following:

(1) Sell and ship wine to any person 21 years of age or older for his or her personal use and not for resale.

(2) Ship wine directly to a resident in this state only in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."

(3) Ship wine only if the permitholder requires the carrier to obtain the signature of any individual 21 years of age or older before delivering any wine shipped to an individual in this state.

(4) If the permitholder is located outside of this state, report to the department no later than January 31 of each year, the total amount of wine shipped into the state during the preceding calendar year under the wine direct shipper permit.

(5) If the permitholder is located outside of this state, pay to the State Board of Equalization all sales and use taxes, and excise taxes on sales to residents of California under the wine direct shipper permit. For excise tax purposes, all wine sold pursuant to a direct shipper permit shall be deemed to be wine sold in this state.

(6) If located within this state, provide the department any necessary additional information not currently provided to ensure compliance with this section.

(7) Permit the department or the State Board of Equalization to perform an audit of the wine direct shipper permitholder's records upon request.

(8) Be deemed to have consented to the jurisdiction of the department or any other state agency and the California courts concerning enforcement of this section any related laws, rules, or regulations.

(d) A wine direct shipper permitholder located outside of the state may annually renew its permit with the department by paying a ten-dollar (\$10) renewal registration fee and providing the department with a true copy of its current alcoholic beverage license issued by another state. A wine direct shipper permitholder located in California shall renew its wine direct shipper permit in conjunction with its master license. For purposes of this section, "master license" means a winegrower's license issued by the department.

(e) The department and the State Board of Equalization may promulgate rules and regulations to effectuate the purposes of this law.

(f) The department may enforce the requirements of this section by administrative proceedings to suspend or revoke the wine direct shipper permit, and the department may accept payment of an offer in compromise in lieu of suspension as provided by this division. Any hearing held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code against a permitholder outside of California shall be held in Sacramento.

(g) Sales and shipments of wine direct to consumers in California from winegrowers who do not possess a current wine direct shipper permit from the department are prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such a shipment is guilty of a misdemeanor pursuant to Section 25617.

History.—Added by Stats. 2005, Ch. 157 (SB 118), in effect January 1, 2006.

States may regulate direct shipment of wine as long as it does not discriminate.—U.S. Supreme Court held that New York and Michigan wine direct shipping statutes were unconstitutional because they discriminated against out-of-state wine growers and interstate commerce, but states could regulate direct shipment of wine, such as by requiring the out-of-state shipper to obtain a permit, as long as such regulation does not discriminate in favor of in-state wine producers and against out-of-state wine producers. *Granholm v. Heald* (2005) 125 S.Ct. 1885.

23661.5. Producer's transportation of wine or beer into this state by vehicle owned or leased. A person who manufactures or produces wine or beer outside of this state, but within the United States, in accordance with the requirements of the laws of the United States, may transport such wine or beer into this state, in a vehicle owned and operated by the manufacturer or producer or operated by him pursuant to a lease the term of which is not less than 30 days, or by contract carrier, for delivery to a licensee who is authorized under this division to import the wine or beer into this state, if:

(a) The delivery is made at the premises of the licensee or to a licensee or a licensed customs broker at the premises of a public warehouse licensed under this division; and

(b) The manufacturer or producer holds a manufacturer's interstate alcoholic beverage transporter's permit under Section 32110 of the Revenue and Taxation Code.

23661.6. Right of wine grower to return previously exported wine in vehicles owned or controlled by the wine grower. A licensed winegrower who in the course of business exports wine from this State to another state, may subsequently return to his licensed premises in this State all or any portion of such wine in private vehicles owned or under the control of the winegrower. Any wine so returned shall be subject to the provisions of Section 32175 of the Revenue and Taxation Code.

23661.7. Right of purchaser to return wine removed from state. A person who has purchased wine from a licensed winegrower, has taken delivery of such wine within this state for delivery or use without the state, and has removed such wine from the state, may return all or any portion of such wine to the licensed premises of the winegrower in this state from whom the wine was purchased. To make such return the purchaser need not obtain any license in this state, and may return the wine in a vehicle owned or controlled by such purchaser.

The provisions of Section 32175 of the Revenue and Taxation code shall apply to any wine so returned.

23662. When shipment deemed consigned to licensed importer. A shipment shall be deemed to be consigned to a licensed importer, although originally consigned to a person not so licensed, when the shipment is, before

delivery and without leaving the possession of the common carrier transporting it, reconsigned or diverted in transit by either the consignor or consignee to a licensed importer to whom final delivery by the common carrier is made.

23663. When shipment presumed for delivery and use within state. Alcoholic beverages which are consigned to a destination within this State shall be presumed to be for delivery or use within this State.

23664. Railroad or other carrier carrying interstate or foreign passengers not deemed importer for sale of beverages on carrier. A railroad, sleeping car, dining car, boat, or steamship company or air common carrier carrying interstate or foreign passengers on trains, boats, or airplanes shall not be deemed to be an importer or subject to an importer's license for bringing into this State alcoholic beverages for the purpose of sale within this State on the trains, cars, boats, or airplanes on which the alcoholic beverages are brought into this State exclusively to passengers or employees not on duty, and for carrying the same alcoholic beverages or any unsold portion thereof out of this State in due course of operation.

23666. Seizure of beverages imported contrary to provisions. Alcoholic beverages imported into this State contrary to the provisions of Sections 23661 to 23664, inclusive, shall be seized by the department.

23667. Receipt of beverages transported and delivered by common carriers. Common carriers transporting alcoholic beverages into this State for delivery or use within this State or common carriers making delivery of alcoholic beverages so transported shall obtain from the licensed importer or customs broker a receipt on a form prescribed by the department for the alcoholic beverages so transported and delivered. If the consignee refuses to give the receipt and show his license to the carrier, the carrier is relieved of all responsibility for delivery of the alcoholic beverages.

23668. Refusal of consignee not a licensed importer or custom broker to give receipt and show license. Subject to the provisions of Section 23662, whenever the consignee is not a licensed importer or customs broker or whenever the consignee refuses to give his receipt and show his license, the carrier shall immediately notify the department at Sacramento giving full details as to the character of shipment, point of origin, destination, and address of the consignor and consignee, and within 10 days the alcoholic beverages shall be delivered to the department and shall be forfeited to the State.

23669. Payment of common carrier's unpaid freight and storage proceeds of sale of seized or forfeited beverages. If any alcoholic beverages seized under Section 23666 or forfeited under Section 23668 are sold by or under the direction of the department, the common carrier's unpaid freight and storage charges accruing on the shipments of the alcoholic beverages shall be satisfied out of the proceeds of any sale made by the State after deducting the cost of the sale and any excise taxes accruing thereon.

23670. Violation of provisions a misdemeanor. Every person violating the provisions of this article is guilty of a misdemeanor.

23671. Importation of beer for sale in State. No beer importer shall purchase any beer not manufactured within the state or cause any beer to be transported into the state for sale in the state, unless the out-of-state vendor making shipment of the beer into the state holds a certificate of compliance issued by the department. A certificate of compliance shall be granted when the out-of-state vendor makes a written agreement with the department to furnish to the board, on or before the 10th day of each month, a report on a form prescribed by the board, showing the quantity of beer shipped by the out-of-state vendor to each licensed beer importer in this state during the preceding month. The out-of-state vendor shall further agree that it and its agents and all agencies within this state controlled by it will comply with all laws of this state and all rules of the department with respect to the sale of alcoholic beverages, including, but not limited to, Chapter 12 (commencing with Section 25000) of Division 9, and Section 25509, to the same extent as licensees.

If any out-of-state vendor, after obtaining the certificate, fails to submit the report or to comply with Section 14575 of the Public Resources Code, the department may suspend or revoke the certificate of compliance in the manner provided for the suspension or revocation of licenses, and after a hearing which shall be held in the City of Sacramento or in any other county seat in this state which the department determines to be convenient to the holder of the certificate. No fee shall be charged for the certificate of compliance which shall remain in effect until revoked by the department.

23672. Designation of licensed importer as authorized importer of brand. A licensed importer shall not purchase or accept delivery of any brand of distilled spirits unless he is designated as an authorized importer of such brand by the brand owner or his authorized agent. Such distilled spirits imported into California shall come to rest at the warehouse of the licensed importer or an authorized warehouse for the account of such licensed importer, before sale and delivery to a retail licensee.

23673. Distilled spirits; price to wholesaler or rectifier. No brand owner of distilled spirits or his agent shall sell any brand of distilled spirits to a wholesaler or rectifier in this state at a price higher than the lowest price at which such brand of distilled spirits is sold by such brand owner or his agent to any wholesaler or rectifier during any calendar month anywhere in any other state or in the District of Columbia or to any state or state agency which owns or operates retail distilled spirits stores.

In determining the lowest price for which any brand of distilled spirits is sold in any other state or the District of Columbia or to any state or state agency which owns and operates retail distilled spirits stores, appropriate reduction shall be made to reflect all discounts, all rebates, allowances, and other inducements of any kind whatsoever offered or given to any such

wholesaler or state, or state agency, as the case may be, purchasing such brand of distilled spirits in such other state or in the District of Columbia or to the state or state agency which owns or operates retail distilled spirits stores; provided that nothing in this section shall prevent differentials in price which make only due allowance for differences in state excise taxes and fees and the actual cost of delivery. As used in this section, the term “excise taxes and license fees” shall mean the excise taxes imposed or the fees required by any state or the District of Columbia. A violation of this section shall be remediable only by a civil action for damages or an action to enjoin a brand owner or his agent from continued violation brought by any person suffering loss as a result of such violation. A judgment in any such action rendered against a licensee shall be deemed grounds for the suspension or revocation of the violator’s license pursuant to Chapter 7 (commencing with Section 24200) of this division. For the purposes of this section, “distilled spirits” does not include brandy produced in California. No California brandy manufacturer or his agent shall be required to file an affidavit pursuant to this section for California brandy.

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